

5/19/66

Memorandum 66-20

Subject: Study 26 - Escheat

You will receive with this memorandum a tentative recommendation proposing a revision of California's existing Uniform Disposition of Unclaimed Property Act, the enactment of an unclaimed property compact, and a revision of Probate Code Section 231. You will also receive with this memorandum a study prepared by the Harvard Student Legislative Research Bureau relating to the Uniform Act and the impact upon that act of the Supreme Court's decision in Texas v. New Jersey. The study contains a draft statute on unclaimed property which we relied on to a considerable extent in preparing the tentative recommendation,

Before preparing the tentative recommendation, we prepared a draft statute which would have incorporated the proposed Harvard statute into the existing California statute. We submitted this to the Controller and to the Attorney General and solicited their comments. Attached to this memorandum as Exhibit I (pink pages) is a letter from the State Controller commenting on that draft. Attached to this memorandum as Exhibit II (yellow pages) is a letter from the Attorney General commenting on that draft. Those letters are attached because they raise certain questions relating to the accompanying tentative recommendation that you should consider. Exhibit III (green pages) is a proposed interstate compact relating to the disposition of unclaimed property that has been prepared by the National Association of Attorneys General.

You should read the accompanying material first. You must then decide whether to recommend the statute contained in the tentative recommendation upon the basis of the information you have. We believe the problem created by Texas v. New Jersey to be primarily a drafting problem. We do not believe that an extensive research study is necessary to determine the drafting changes that must be made. Similarly, we believe that one can determine all that it is possible to know concerning the ramifications of the Nolan case

and the impact upon that case of Texas v. New Jersey from the materials that you have. We do not believe that it is necessary to have an extensive research study to determine the rather narrow policy questions presented by the judicial decisions in this area. If you do not concur, and believe that a research study is needed on any or all of the policy problems involved, it seems unlikely that we will be able to recommend the proposed legislation to the 1967 session (or for that matter to the 1969 session). There is not time enough for such a study to be prepared and considered before the 1967 session begins and we will be devoting all our time thereafter to eminent domain and inverse condemnation.

If you decide to go forward with the recommendation, you should consider the following specific matters:

Section 1501(b), (g), and (h)

The existing California abandoned property statute excludes a "utility" from its definition of a person. At least, this seems to be what it is trying to do. Section 1501(g) says that "person" does not include a utility and Section 1501(h) then states that a "utility" means "any person who" This somewhat circular language was probably intended to exclude utilities from the scope of the unclaimed property act.

This blunderbuss method of exclusion creates problems. If a utility is not a person it cannot be a holder. If it cannot be a holder, it is not required to report unclaimed dividends, unclaimed shares, unclaimed principal and interest on bonds, or any other unclaimed property that is indistinguishable from any other unclaimed property in the hands of any other private corporation. We suspect that the exemption was probably intended to cover refunds such as those that were ordered by the Public Utilities Commission in the case of the telephone and the gas companies. If those refunds are excluded from this act, the Public Utilities Commission can then order their distribution to "present customers of the company in

accordance with its present practice.

Accordingly, we added a subdivision to Section 1582 to exempt such refunds and we deleted the language excluding a utility from the definition of a person, a holder, and a business association. This exclusion leaves deposits to guarantee payment for services that are left behind when a customer leaves as escheatable property under the act. It also leaves dividends, shares, wage claims, and bond claims as escheatable property under the act.

We have communicated with the Public Utilities Commission to determine the precise purpose of the exclusion which was added in 1959, but we have not as yet discovered what the precise purpose was.

Section 1511(a), (b), and (d)

The State Controller raises a question concerning the authorization for a holder to deduct "reasonable charges." He reports that whether a charge is lawful or reasonable has been subject to dispute with some holders. He had no suggestion to solve the problem, nor do we have any.

Section 1530 (g)

The State Controller suggests that this subdivision be retained. Since the subdivision is of temporary value only, we have attempted to preserve it by the uncodified Section 47 of the proposed statute.

Section 1531 (d)

We accepted the State Controller's suggestion that the holder be relieved from sending notices to owners. We substituted, however, a duty on the part of the Controller to mail a notice to all owners of more than \$10. Under the previous statute, the Controller did not have to send notice to anyone owning less than \$25. This revision will provide mailed notice to everyone entitled to recover any of the escheated property.

Section 1533 (d)

Both the Controller and the Attorney General suggested the addition of a separate section stating the rule in subdivision (d). We did not see the need for any separate section.

Section 1550

The Controller objects to a permanent escheat provision at the present time. He wants to await a decision on pending litigation. We do not believe that the fact that litigation is pending should affect the rule one way or another.

The Controller also suggested eliminating some of the details required to be in the published notice of permanent escheat. When he made the suggestion, Section 1551, providing for administrative escheat, had not been formulated. The greatly simplified procedure for the administrative escheat of property worth \$1,000 or less seems to us to meet the problems involved in Section 1550.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

ALAN CRANSTON
CONTROLLER

EXHIBIT I



Controller of the State of California

SACRAMENTO
April 29, 1966

[Note: References in letter are to a draft of legislation that has been superseded by the tentative recommendation attached to Memorandum 66-20. References to the provisions in the tentative recommendation are ~~subsections~~ ~~those~~ indicated in brackets or by ~~subsections~~ inserts on letter.]

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Room 30, Crothers Hall
Stanford University
Stanford, California 94305

Dear Mr. DeMouilly:

The following are our comments on the materials forwarded with your letter of February 7. (Unless otherwise noted, references are to revised sections and subsections.)

PRELIMINARY DRAFT - UNCLAIMED PROPERTY ACT

§§ 1501(a) and (d): [1501(a) and (c)]

The comment on page 12 of the Harvard Law Review article states that the revised definition of banking organization "enlarges the Uniform Act's category . . . to include national banks."

Our law presently defines banking organization to include "any bank." This broad definition applies to national banks, and such banks have been reporting and remitting unclaimed property without question.

Revision of the definition may be desirable as a clarification of existing law, but any implication that the revision "enlarges" the category to include national banks not otherwise included, would appear to be inadvisable, particularly in view of pending litigation involving a national bank.

This comment also applies as well to the revised definition of financial organization in subsection (d) to include federal savings and loan associations.

Perhaps the clause "federal or state" should be located in subsections (a) and (d) so as to precede and refer to all types of institutions enumerated.

§ 1501(i): (omitted)

The proposed definition of "property" includes tangible personalty located in this State. The only tangible personal property now subject to the Act is received as part of the unclaimed contents of safe deposit boxes.

Most other types of unclaimed personalty, of which we know, are covered by special laws (e.g., Pawnbrokers, Financial Code § 21201, et seq.; Innkeepers, Civil Code § 1861, et seq.; Warehouses, Civil Code § 2081, et seq.). Perhaps these areas need exploring to see whether the Unclaimed Property Law should cover excess sale proceeds after deducting expenses and liens realized upon liquidation of property subject to such special laws.

We can see the possible advantage of having an omnibus clause to cover any situation that might arise involving something of consequence. However, our experience with the contents of safe deposit boxes indicates that there would have to be selectivity, possibly administratively, in deciding what would be worthwhile to receive. Otherwise, the administrative costs in holding and disposing of the property would probably be excessive.

Changes proposed in the draft in §§ ¹⁵¹¹(1502), ¹⁵¹⁶(1507), ¹⁵¹⁷(1508), and ¹⁵³⁰(1510) relative to the types of personalty, will depend on the determination made with respect to the definition of "personal property."

§§ 1501(b), (h), and (j): [1501(b), (g), and (i)]

The law presently provides several exemptions applicable to utilities:

(1) A limited exemption in the last sentence of present § 1510(g) with respect to unclaimed amounts transferred to capital, surplus or undivided profits with the approval of a regulatory or licensing authority.

^[1522]
(2) The exemption in present § 1526 of property in the official custody of a municipal utility district.

(3) The omnibus exemption for a utility defined in present § 1501(h) by reason of the express exclusions in the definitions of "business association" and "person."

The omnibus exemption was not contained in the unclaimed property bill when first introduced at the 1959 Regular Session, but was amended into the bill during its legislative course.

The Law Revision Commission may wish to review the basis for continuing the omnibus exemption, or at least the extent of such exemption, particularly as it applies to unclaimed stocks and dividends. For example, a utility company domiciled in another state having an unclaimed property law (without a similar exemption), would very likely be required to pay to that state the unclaimed dividends of owners whose last known addresses are in California since such property would be exempt under our law.

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The proposed revision of the definition of "utility" would delete the qualifying phrase "within this State." The effect of such a change would be to extend this omnibus exemption to all such utilities, regardless of whether or not they operate in California.

§§ 1502(a), (b) and (d): [1511(a), (b) and (d)]

These provisions authorize a holder to deduct from unclaimed property "reasonable" charges which may "lawfully be withheld." This rather general language was a matter of concern to us when the Act was adopted in 1959, and continues to be a problem. In absence of clear guidelines, whether a charge is authorized by law or contract or whether the amount of the charge is reasonable, have been matters of dispute with some holders.

At this time, we have no solution to suggest on how this situation might best be resolved.

§ 1510(e): [1530 (e)]

Revised subsection (e) would require a holder to mail a notice to the last known address of each owner whose claim has not been barred by the statute of limitations.

This provision apparently will only apply to trust items since the period of limitations would have run on most other items of property.

Though there would be no expense to the State, it would appear that requiring the holder to mail a communication to each such holder would involve a duplication of effort. The State must, in any event, mail a notice to the last known address of every owner entitled to property valued at \$25 or more

§ 1511(d): 1531(d)

§ 1510(e): [1530 (e)]

For the present, we recommend that this subsection not be deleted. Because of pending litigation, many initial reports have not been fully processed, and we believe that others have not been filed. This subsection provides the basis and extent of the reporting requirements for purposes of the holder's initial report.

Until administrative action can be completed, which must await final disposition of the pending litigation, this provision should be retained.

§§ 1511(b)(4), (f)(4), and 1520.1: [1531 (b)(4), (e)(4), and 1550]

At the present time, we are involved in major litigation testing the Unclaimed Property Act. Eventually, the Act should be amended to provide for escheat or some cut-off on claims, but we suggest that the decision in this regard be deferred until settlement of the litigation.

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§ 1511(c): [omitted]

We recommend that this provision be deleted. There appears to be no benefit or purpose in the requirement that a copy of the second published notice be mailed to the holder, and it would involve additional administrative expense to the State.

Items of property reported by a holder may be included in publications in a number of counties and having different publication dates. Mailing each holder copies of all publications containing one or more items of property reported by the particular holder, would present administrative problems without corresponding benefit to the State, the holder, or the owner.

§ 1512: [1532]

Presently, the holder is required to remit property to the State within seven months from the final dates for filing reports. We recommend that this be changed to within six months from the filing dates. This will permit the State to receive the property up to one month earlier, and will avoid remittances being received during the closing month of a fiscal year which traditionally has a heavy workload.

§ 1517(b): [1534 (4)]

The extensive detailing in subsection (b) of the purposes for which expenditures may be made from the abandoned property account, has been a recurring source of difficulty. Various types of expenses may be incurred which do not clearly come within one of the enumerated purposes, such as reimbursement of holders under § 1513, and expenses connected with holding public auctions under § 1516(a). 1533 1560

To avoid this continuing problem, it is recommended that subsection (b) be revised as follows:

"(b) All money in the abandoned property account in the Unclaimed Property Fund is hereby continuously appropriated to the State Controller, without regard to fiscal years, for expenditure in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following:

(1) For payment of claims allowed by the State Controller under the provisions of this chapter."

[Paragraphs 2 - 8, incl., remain unchanged.]

§ 1518(a): [1540 (a)]

This section should be clarified by inserting the word "net" before "proceeds" in the third line of subsection (a). The owner may only claim the amount remaining after deduction of sale costs and the holder's charges.

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§ 1518(b): [1540 (b)]

The proposed revisions would require a formal hearing whenever requested by a claimant. The matter of holding hearings was considered in 1959 and resulted in present § 1519(a) which permits discretion in this regard.

The determination on claims usually rests on documentary evidence submitted by the claimants and, as to many claims, a formal hearing may be unnecessary. For example, there would seem to be no reason for a hearing if the claim is allowed. In other situations, it may be more appropriate that there be a judicial determination; for example, when the owner is deceased and the estate in excess of \$500 has not been probated.

The present provisions have worked well. We are not aware of any dissatisfaction.

§ 1518(c): [1540 (c)]

This provision should require a written finding only after a formal hearing on a claim. To require such findings on all claims presented, including those that are allowed, would be burdensome and serve no purpose.

§ 1520.1: [1550]

For the reasons discussed above, our recommendation is that the decision on escheat should be deferred pending present litigation. Accordingly, proposed § 1520.1 should be deleted for the time being.

When escheat is considered, however, some administrative simplification and economies should be taken up. For example, some of the details required to be in the published notice under subsection (b) should be eliminated. A publication of all information now listed would be costly, and of questionable value in notifying owners of the escheat. Such notice should only include the information now specified in § 1511(b).

§ 1523(b): [1571 (b)]

This provision might be clarified by insertion of the word "either" before the colon in the first sentence, and insertion of the word "or" after the semi-colon in (3).

§ 1523(e): [1573 (e)]

We are uncertain as to the source from which the 1% reward would be paid. Would it be charged against and deducted from the amount due the owner of the property so recovered, or would it be merely charged against the Unclaimed Property Account as a general administrative expense? Should a reward be paid if the law of the other state does not contain a reciprocal provision for a reward?

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§ 1527:

[1574]

This section should be clarified to read:

"No agreement under which any person undertakes to locate property reported under Section 1510(d) shall be valid if it is entered into within nine months after May 1 (with respect to property reported by a life insurance company) or November 1 (with respect to property reported by all other holders) and requires payment of a fee or other compensation exceeding 10 per cent of the value"

§ 1528 (add):

When the Uniform Disposition of Unclaimed Property Act was enacted in 1959 to supersede the prior law on unclaimed property, Code of Civil Procedure § 1378, a general provision relating to management of unclaimed property, was inadvertently overlooked. To clarify this situation, the following should be incorporated into the Act as § 1528:

"No suit shall be maintained by any person against the State or any officer thereof, for or on account of any transaction entered into by the Controller pursuant to this chapter, except as specifically authorized."

Upon inclusion of the above provision, subsection (d) of § 1516 may be deleted.

UNCLAIMED PROPERTY COMPACT:

You advised that the Compact may not be revised, and requested our view as to whether it should be enacted in its present form.

It appears the Compact will be helpful in the administration of this law and we therefore recommend its approval.

PROBATE CODE § 231:

The amendments appear to accomplish their purpose and, we believe, are desirable.

We regret that circumstances prevented us from submitting our comments sooner on this matter. If we can be of further assistance, please contact us.

Mr. John H. DeMouilly

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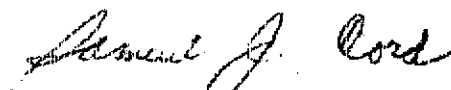
April 29, 1966

We will appreciate receiving any subsequent materials or drafts prepared in connection with this subject.

Very truly yours,

ALAN CRANSTON, STATE CONTROLLER

By



Samuel J. Cord, Chief
Division of Accounting

UNCLAIMED PROPERTY COMPACT

[Taken from Suggested State Legislation 1966, developed by the Committee of State Officials on Suggested State Legislation of the Council of State Governments, pages 42-49.]

The Escheat Committee of the National Association of Attorneys General has had as a major field of interest the development of an Unclaimed Property Compact, work on which was suspended two years ago to await the outcome of Texas v. New Jersey.

At least four out of every five states now have fairly comprehensive unclaimed property statutes, and some of the remaining jurisdictions have shown recent interest in legislation of this type. The idea that property which has become unclaimed or abandoned should come into the possession of the state can now be considered well established. The private holder of funds or other property in which he has no claim of his own but which is in his hands only because the rightful owner is unknown or cannot be found is not generally regarded as the proper person to benefit from it. Consequently, statutes now provide in most jurisdictions that, after a fixed period of years, such property is to be delivered into the custody of the state. These statutes are of two types, custodial and escheat. The former type provides that the state acts only as custodian and that, if at any time in the future, the person entitled to the property appears and makes claim, the state will pay the property or its equivalent over. The true escheat statute, on the other hand, provides that after a specified period the property belongs to the state. While the differences between these two approaches and their results are notable, the overriding fact is that most of the property delivered to the state under either type of unclaimed property statute remains in the hands of the state and is available to augment public revenues.

It is probable that in most instances the application of any of the several recognized rules for determining which state is entitled to take unclaimed property yields the same result. However, in enough instances to be of first-rate importance, there is the possibility of claim by more than one state. The last known address of the person entitled to the property may be in one state, while the state in which the holder is incorporated may be another state. Or a variety of other circumstances may produce more than one state whose unclaimed property law could come into play.

Some years ago the number of actual interstate aspects of the unclaimed property situation was relatively small because only a few states had unclaimed property laws. But such is no longer the case.

Consequently, the decision in Western Union Telegraph Co. v. Commonwealth of Pennsylvania, 368 U. S. 71 (1961) was particularly unsettling. The clear import of that case was that in circumstances where more than one state might be able to claim the property, no state might be able to take, at least not without costly and time consuming litigation in the United States Supreme Court. The reason advanced by the Court was that a state could not take the property unless it could assure the holder that the claims of all other states would be foreclosed.

The logic of this situation appeared to point to an interstate agreement as the most likely means of establishing rules that would produce a single state claimant in particular situations. Accordingly, work on an Unclaimed Property Compact began. The National Association of Attorneys General was involved from the outset, and ultimately came to play the principal role in the drafting of the compact.

While the work was in progress, the case of Texas v. New Jersey, 85 S.Ct. 626 (1965) arose, and some states thought it appropriate to await the outcome of that litigation before proceeding with the compact. Since the litigation was decided early in 1965, the Escheat Committee of the National Association of Attorneys General resumed its work.

Since the principle of "last known address" is favored in the statutes of most states, and because the Supreme Court in Texas v. New Jersey adopted it as the primary test, the Unclaimed Property Compact also establishes "last known address" as the first reliance for state entitlement to unclaimed property which is both personal and intangible. With respect to real property and tangible personalty, the compact codifies the generally accepted rule that the entitled jurisdiction is the one in which the property is situated. The compact also makes provision for situations in which the application of the primary test does not yield an entitled state. State of incorporation and principal office of the holder are used, in that order.

While the compact follows the decision of the Supreme Court in basic respects, it is a necessary supplement to and, in some instances, corrective of Texas v. New Jersey. That case opened up the prospect of continuing litigation over unclaimed property transactions prior to February 1, 1965 (the date on which the case was decided). It also indicated that further litigation of an unsettling nature might result from subsequently enacted state statutes. The compact would provide necessary finality and stability in these respects, without the need for

litigation. By setting up a reasonably complete set of rules for determining entitlement to unclaimed property in cases of multiple state claims, the compact could bring order into the field and assist all states to secure unclaimed property to which they are entitled.

The compact would go into effect on adoption by the first two states. It is open to joinder by all states, the District of Columbia, the Commonwealth of Puerto Rico and Territories and Possessions of the United States. Of course, the compact seeks to affect only rights as among the party states and so will grow in effectiveness as the number of parties increases.

Suggested Legislation

[Title should conform to state requirements. The following is a suggestion: "An Act entering into the Unclaimed Property Compact, and for related purposes."]

(Be it enacted, etc.)

Section 1.

- 1 The Unclaimed Property Compact is hereby enacted into law
- 2 and entered into with all other jurisdictions legally joining there-
- 3 in in the form substantially as follows:

UNCLAIMED PROPERTY COMPACT

(At this point insert the exact text of the Unclaimed Property Compact as set forth on the pages following this model enabling Act. The text of the compact should be enacted in identical language by all ratifying states.)

Section 2.

- 1 The [state agency administering unclaimed property laws]
- 2 may enter into any agreements necessary or appropriate to co-
- 3 operate with another state or states and sharing of costs pursu-
- 4 ant to Article III (c) 2 of the compact, or for the assumption of
- 5 bearing of costs pursuant to Article IV thereof.

Section 3.

1 With reference to this State and as used in Article VIII of the
2 compact, the term "executive head" shall mean the Governor.

Section 4.

1 [Insert effective date.]

TEXT OF THE UNCLAIMED PROPERTY COMPACT

ARTICLE I

Purposes

1 It is the purpose of this compact and of the states party here-
2 to:

3 (a) To eliminate the risks and inconvenience to which holders
4 of unclaimed property may be subject by reason of actual or pos-
5 sible claims thereto or to the custody thereof by more than one
6 state.

7 (b) To provide a uniform and equitable set of standards for
8 the determination of entitlement to receive, hold and dispose of
9 unclaimed property.

10 (c) To provide methods whereby the party states may co-
11 operate with each other in the discovery and taking possession
12 of unclaimed property.

ARTICLE II

Definitions

1 As used in this compact, the term:

2 (a) "Unclaimed property" means any property which under
3 the laws of the appropriate state is subject to delivery to that
4 state for its use or custody by reason of its having been un-
5 claimed or abandoned for such period as the laws of that state
6 may provide.

7 (b) "Holder" means any obligor or any individual, business
8 association, government or subdivision thereof, public corpora-
9 tion, public authority, estate, trust, two or more persons hav-
10 ing a joint or common interest, or any other legal or commer-
11 cial entity having possession, custody or control of unclaimed
12 property.

13 (c) "State" means a state of the United States, the District
14 of Columbia, the Commonwealth of Puerto Rico, or a territory
15 or possession of the United States.

ARTICLE III

Determination of Entitlement to Unclaimed Property

1 (a) Only the state in which unclaimed real property or un-
2 claimed tangible personal property is located shall be entitled
3 to receive, hold and dispose of such property in accordance with
4 its laws.

5 (b) In the case of unclaimed property the disposition of which
6 is not determined by the application of paragraph (a) of this
7 Article, and the holder of which property is subject to the juris-
8 diction of only one state, that state and no other shall be en-
9 titled to receive, hold and dispose of such unclaimed property
10 in accordance with its laws.

11 (c) In respect of all unclaimed property the disposition of
12 which is not determined by the applications of paragraphs (a) or
13 (b) of this Article, entitlement shall be determined as follows:

14 1. The state in which is located the last known address of
15 the person entitled to the property shall be entitled to receive,
16 hold and dispose of the same in accordance with its laws. The
17 last known address shall be presumed to be that shown by the
18 records of the holder.

19 2. If the identity of the person entitled is unknown; if no
20 address for the person sufficient to meet the requirements of
21 subparagraph 1 of this paragraph is known; or if the laws of the
22 state of last known address do not subject the property in ques-
23 tion to taking, the state under whose laws the holder is incor-
24 porated (if the holder is a corporation) or organized (if the holder
25 is an association or artificial entity other than a corporation),
26 or the state where the holder is domiciled (if the holder is a
27 natural person) shall be entitled to receive, hold and dispose of
28 the same in accordance with its laws. If the holder is incor-
29 porated or organized under the laws of more than one party state,
30 such party states shall be entitled to take equal shares of the
31 property covered by this paragraph. In such event, each shall
32 bear a proportionate share of the costs of the taking.

33 3. If the disposition of any unclaimed property is not de-
34 termined by application of any preceding provision of this Article,

35 the state in which is located the office of the holder making the
36 largest total disbursements within its immediately preceding
37 fiscal year shall be entitled to receive, hold and dispose of the
38 property in accordance with its laws.

39 4. Whenever unclaimed property has been taken by a
40 party state in accordance with this paragraph, within one year
41 from the taking of such property, or within one year from the
42 earliest time at which another party state would have been en-
43 titled to take the property in question pursuant to its unclaimed
44 property laws, whichever date is later, any party state shall be
45 entitled to establish the identity and last known address of an
46 entitled person previously thought to be unknown, or to establish
47 a later known address for an entitled person. Upon such estab-
48 lishment, and on the basis thereof a party state shall upon de-
49 mand be entitled to receive the property from the state initially
50 taking the same and to hold and dispose of it in accordance with
51 its laws. This subparagraph shall not apply to a claim made by
52 a state under a statute enacted subsequent to the time when the
53 initial state took the property.

ARTICLE IV

Cooperation

1 The party states pledge to each other faithful cooperation in
2 the administration of their respective unclaimed property laws.
3 To this end, a party state shall, upon the request of any other
4 party state, make available to any such state any information
5 which it may have in its possession by reason of its administra-
6 tion of its own unclaimed property laws, unless disclosure
7 thereof is expressly prohibited by the laws of the party state of
8 which the request is made. Unless the party states concerned
9 otherwise agree, the party state making a request for informa-
10 tion pursuant to this Article shall be entitled to receive it only
11 by bearing such costs as may be involved in furnishing the in-
12 formation requested.

ARTICLE V

State Laws Unaffected in Certain Respects

1 Each party state may enact and continue in force any statute
2 not in conflict with this compact and may employ the escheat,

3 custodial, or any other principle in respect of unclaimed prop-
4 erty.

ARTICLE VI

Finality

1 Except as provided in Article III (c) 4:

2 1. No unclaimed property escheated or received into the
3 custody of a party state, prior to February 1, 1965, pursuant
4 to its laws shall be subject to the subsequent claim of any other
5 party state, and the enactment of this compact shall constitute
6 a waiver by the enacting state of any such claim.

7 2. No unclaimed property escheated or received into the cus-
8 tody of a party state on or after February 1, 1965 shall be sub-
9 ject to the subsequent claim of any other party state, and the
10 enactment of this compact shall constitute a waiver by the en-
11 acting state of any such claim; provided that such taking was
12 consistent with the provisions of this compact.

ARTICLE VII

Extent of Rights Determined

1 The only rights determined by this compact shall be those of
2 the party states. With respect to any non-party state, an as-
3 sertion of jurisdiction to receive, hold or dispose of any un-
4 claimed property made by a party state shall be determined in
5 the same manner and on the same basis as in the absence of this
6 compact. In any situation involving multiple claims by states,
7 both party and non-party, the standards contained in this com-
8 pact shall be used to determine entitlement only as among the
9 party states. With respect to the claims of any non-party state
10 any controversy shall be determined in accordance with the law
11 as it may be in the absence of this compact. The enactment of
12 this compact shall not constitute a waiver of any claim by a party
13 state as against a non-party state.

ARTICLE VIII

Entry Into Force and Withdrawal

1 This compact shall enter into force and become binding as to

2 any state when it has enacted the same into law. Any party state
3 may withdraw from the compact by enacting a statute repealing
4 the same, but no such withdrawal shall take effect until two years
5 after the executive head of the withdrawing state has given notice
6 in writing of the withdrawal to the executive head of each other
7 party state. Any unclaimed property which a state shall have
8 received, or which it shall have become entitled to receive by
9 operation of this compact during the period when such state was
10 party hereto shall not be affected by such withdrawal.

ARTICLE IX

Construction and Severability

1 This compact shall be liberally construed so as to effectuate
2 the purposes thereof. The provisions of this compact shall be
3 severable and if any phrase, clause, sentence or provision of
4 this compact is declared to be contrary to the constitution of any
5 party state or of the United States or the applicability thereof to
6 any government, agency, person or circumstance is held in-
7 valid, the validity of the remainder of this compact and the ap-
8 plicability thereof to any government, agency, person or cir-
9 cumstance shall not be affected thereby. If this compact shall
10 be held contrary to the constitution of any state party thereto,
11 the compact shall remain in full force and effect as to the re-
12 maining states and in full force and effect as to the state af-
13 fected as to all severable matters.

TENTATIVE RECOMMENDATION
of the
CALIFORNIA LAW REVISION COMMISSION
relating to
THE ESCHEAT OF PERSONAL PROPERTY

Although the ancient concept of escheat that existed at common law was somewhat different, escheat is now considered generally to be the right of the government to claim property that has no owner. Note, 61 COLUM. L. REV. 1319 (1961). Under this modern concept of escheat, there are two classes of property that are usually subjected to a state's escheat claims. First, many states claim by escheat property that has been abandoned by its owner. Second, virtually all states claim by escheat the property that belonged to a person who died without heirs. California's escheat statutes have provided for the escheat of all property in the second category and for the escheat of certain classes of property in the first category. Recent decisions by the courts, however, have rendered the existing California statutes inadequate to deal with the problems that exist in this field. The statutes claim escheat rights that this state cannot lawfully assert, and they do not provide for the assertion of escheat rights that the state is entitled to assert.

Escheat of Abandoned Property

In 1959 the Uniform Disposition of Unclaimed Property Act was enacted in California as Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. The act provides a comprehensive scheme for the reporting to the State Controller and the subsequent delivery of various kinds of unclaimed personal property. The Uniform Act replaced a less

comprehensive scheme for the escheat of various kinds of personal property. For the most part, the Uniform Act applies to intangible property--wages, bank deposits, dividends, corporate shares, etc. The act applies also to some forms of tangible personal property, such as that found in safety deposit boxes. The Uniform Act provides generally that if the owner of such property has failed to claim it for a specified period of time, the holder is required to report this fact to the State Controller. Subsequently, after due notice, the property is transferred to the custody of the State Controller who then holds the property subject to any claim the true owner might make. The property subject to the Uniform Act is limited to that held by persons doing business in this state or otherwise subject to the jurisdiction of this state.

Since the enactment of the Uniform Act the United States Supreme Court decided Texas v. New Jersey, 379 U.S. 674 (1965). In Texas v. New Jersey, the Supreme Court held that only one state has the power to escheat intangible personal property. If the holder of the property is subject to the jurisdiction of more than one state, the holder cannot be subjected to escheat claims by more than one state. The Supreme Court rejected a contention that the right of a state to escheat intangible property should be based upon the state's jurisdiction over the holder of the property. Instead, the Supreme Court held that intangible property should escheat to the state of the last known address of the owner of the property as shown on the books and records of the holder. If the books and records do not reflect an address of the owner, the Supreme Court held that such intangible property may be escheated by the state where the holder is domiciled; but, in such a case, if another state later proves that the actual last address of the owner was within its borders, that state may then assert a claim to the property and recover it from the state that originally escheated it. If the state of the last known address of the owner as shown by the books and records of the holder does not provide for the escheat of abandoned property, the Supreme Court held

C that the state where the holder is domiciled may escheat the property; but, if the state of last known address later enacts a law providing for the escheat of such property, that state may then claim the property and recover it from the state that originally escheated it.

The rules laid down by the United States Supreme Court are quite inconsistent with the statutory rules contained in the Uniform Disposition of Unclaimed Property Act. The Uniform Act is based upon this state's jurisdiction over the holder. The United States Supreme Court has made it clear that this state has no right to escheat much of the abandoned property that is held by holders who are subject to the jurisdiction of the California courts. On the other hand, California has the right to escheat much abandoned property in the hands of holders who are not subject to the jurisdiction of the California courts, but the statutory provisions of the Uniform Act do not provide for the escheat of such property.

C Accordingly, the California Law Revision Commission recommends a comprehensive revision of the Uniform Act to bring it into harmony with the United States Supreme Court's decision in Texas v. New Jersey. The statute should be revised so that California no longer claims the right to escheat property that is not subject to escheat by California under the rules laid down by that decision. The act should also be revised so that California may assert the escheat claims that it is entitled to assert under the rules laid down by the Supreme Court.

C When the Uniform Act was enacted in 1959, it superseded statutes that provided for the permanent escheat of abandoned property. The superseded statutes provided that after a requisite period of time and due notice to the owner, the title to the abandoned property vested absolutely in the state and the owner's claim was forever barred. The Uniform Act does not provide for such permanent escheat. Under the Uniform Act the Controller may never close

his books upon the property delivered to him under its terms. The owner or his descendants or successors maintain a perpetual right to claim the property. The Law Revision Commission recommends that the act be revised to again provide for the permanent escheat of abandoned property after proper notice and opportunity to claim the property has been given to the owner of the property.

Before Texas v. New Jersey was decided, the National Association of Attorneys General had begun work on an unclaimed property compact designed to resolve many of the problems between the signatory states that were resolved by the Supreme Court in Texas v. New Jersey. After Texas v. New Jersey was decided, the Association continued work on a compact. The compact that has been prepared by the Association is designed to provide rules to govern those situations involving more than one state where the rules set forth in Texas v. New Jersey do not necessarily yield a single escheat claimant. The compact is also designed to settle the status of property that was unclaimed prior to the date that Texas v. New Jersey was decided (February 1, 1965).

The Commission recommends that this state join in the compact. The compact, by setting up a reasonably complete set of rules for determining entitlement to unclaimed property in cases of multiple state claims, will bring order into the field and assist this state as well as other states that become signatories to the compact to secure unclaimed property to which they are entitled.

Escheat of Property Upon Owner's Death Without Heirs

Probate Code Section 231 provides that if a decedent leaves no one to take his estate or any portion thereof under the laws of this state, the same escheats to this state at the death of the decedent. In Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), the court held that the rule stated in

Section 231 is subject to the rule stated in Section 946 of the Civil Code,
to wit:

If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Applying Section 946, the court held that a California bank account owned by a Montana domiciliary who died without heirs escheated to the state of Montana and not to the state of California. The rule stated by the court is broad enough to apply to all personal property, including tangible personal property located in California.

Other states have not been as solicitous of California's escheat claims as the California court was of Montana's escheat claim in the Nolan case. In In re Rapoport's Estate, 317 Mich. 291, 26 N.W.2d 777 (1947), and in In re Menshefrend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1954), it was held that bank accounts located in Michigan and New York that belonged to California domiciliaries who died without heirs escheated to Michigan and New York respectively, and not to California. Thus, under these decisions, California surrenders whatever right it has to escheat personal property located within California or in the hands of a holder located in California when the owner dies domiciled elsewhere, and California is powerless to claim the escheat of property located elsewhere that belongs to California domiciliaries who die without heirs.

It is impossible to determine what effect Texas v. New Jersey, 379 U.S. 674 (1965), may have on the results reached by the California, Michigan, and New York courts. The situation presented to the Supreme Court in Texas v. New Jersey involved property which was merely unclaimed. No one knew what had happened to the owner. He had merely disappeared or had failed to claim what was his. The California, Michigan, and New York courts were concerned with property belonging to a known decedent. In each case, the administrator of that decedent was asserting a claim to the property. There was no dispute

C in each case as to the domicile of the decedent, although the last known address of the decedent from the books and records of the holder may well have differed from his last actual address. It is possible that when a decedent's estate is involved the Supreme Court may not require distribution of the property to the state of the last known address according to the books and records of the holder where that last known address is clearly neither the domicile nor the last address of the owner. It is possible, too, that there may be other departures from the Texas v. New Jersey rules occasioned by the fact that facts concerning the last owner are reasonably ascertainable.

C Because it is impossible to determine what rules the United States Supreme Court will develop to deal with property of persons dying without heirs, the Law Revision Commission recommends that Section 231 of the Probate Code be revised so that California will be entitled to assert an escheat claim to any property it may be entitled to escheat under whatever rules the United States Supreme Court develops. The statute should be amended so that this state no longer loses the property of both domiciliaries and nondomiciliaries in every case where there is more than one state interested in the situation.

The recommendations of the Law Revision Commission would be effectuated by the enactment of the following legislation:

An act to amend Sections 1300, 1500, 1501, and 1614 of, to amend and renum-
ber Sections 1502, 1504, 1506, 1507, 1508, 1510, 1511, 1512, 1513,
1514, 1515, 1516, 1517, 1520, 1521, 1522, 1524, 1525, 1526, and 1527 of,
to amend the heading of Chapter 7 (commencing with Section 1500)
of Title 10 of Part 3 of, to add a new article heading immediately
preceding Section 1500 of, to add Article 2 (commencing with
Section 1510) to Chapter 7 of Title 10 of Part 3 of, to add
Sections 1512 and 1514 to, to add a new article heading immediately
preceding Section 1510 (renumbered Section 1530 by this act) of,
to add Article 4 (commencing with Section 1540) to Chapter 7 of
Title 10 of Part 3 of, to add Section 1542 to, to add Article 5
(commencing with Section 1550) to Chapter 7 of Title 10 of Part 3
of, to add a new article heading immediately preceding Section
1513 (renumbered Section 1560 by this act) of, to add a new
article heading immediately preceding Section 1515 (renumbered
Section 1570 by this act) of, to add Sections 1571, 1572, and
1573 to, to add a new article heading immediately preceding
Section 1525 (renumbered Section 1580 by this act), of, and to
repeal Sections 1503, 1505, 1509, 1518, 1519, and 1523 of, the
Code of Civil Procedure and to repeal Section 3081 of the
Civil Code, relating to unclaimed property.

The people of the State of California do enact as follows:

SECTION 1. Section 1300 of the Code of Civil Procedure is amended to read:

1300. For the purposes of this title, the following definitions shall apply:

(a) "Property," unless specifically qualified, includes all classes of property, real, personal, and mixed.

(b) "Unclaimed property," unless specifically qualified, means all property which is unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state, or which, under any provision of law, will become unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state, or to the possession of which the state is or will become entitled, if not claimed by the person or persons entitled thereto within the time allowed by law, whether or not there has been a judicial determination that such property is unclaimed, abandoned, ~~presumptively-abandoned,~~ escheated, permanently escheated, or distributed to the state ~~;-but-such-term-does-not-include-property~~ which-is-subject-to-escheat-under-the-provisions-of-an-act-entitled "An-act-relating-to-the-rights,-powers-and-disabilities-of-alien and-of-certain-companies, associations-and-corporations with respect to property-in-this-state, providing-for escheats-in certain-cases, prescribing-procedure-therein,-requiring-reports-of certain-property holdings-to-facilitate-the enforcement-of-this-act, prescribing penalties for-violation-of the-provisions-hereof,-and-repealing-all acts-or-parts of acts inconsistent-or in-conflict herewith,"-approved by electors November-2, 1920, as amended .

(c) "Escheated," "Escheat," unless specifically qualified, means "title to which has vested in the State," the vesting in the state of title to property without a known owner, whether by judicial determination or by operation of law, subject, however, to the right of claimants to appear and claim the escheated property or any portion thereof, as provided in this title . When used in reference to the law of another state, "escheat" includes the transfer to the state of the right to the custody of such property.

(d) "Permanently escheated" "Permanent escheat" means "title to which has vested absolutely in the State" the absolute vesting in the state of title to property without a known owner, pursuant to judicial determination, pursuant to a proceeding of escheat as provided by Chapter 5, or pursuant to or by operation of law, after the period has elapsed during which claimants may appear and claim the property, or any portion thereof, as provided in this title and the barring of all claims to the property by the former owner thereof or his successors .

(e) "Controller" means the State Controller, and "Treasurer" means the State Treasurer.

Comment. Section 1300 is amended to permit more convenient use of the defined terms in Chapter 7 (commencing with Section 1500) of this title.

The term "presumptively abandoned" has been deleted from subdivision (b) because it is no longer used, as it formerly was, in the substantive provisions relating to the escheat of abandoned property. The reference to the initiative act approved in 1920 has been deleted from subdivision (b) because it is obsolete. The act referred to was declared unconstitutional (Sei Fujii v.

State, 38 Cal.2d 718, 242 P.2d 617 (1952)) and has been repealed (Cal. Stats. 1955, Ch. 316, §§ 1-2, p. 767; Cal. Stats. 1957, p. cxxxvii).

The definitions in subdivisions (c) and (d) have been broadened to include escheats under the law of other states as well as escheats under the law of this state; for under Section 1510, the right of California to escheat certain intangible property depends on whether such property is subject to escheat under the law of another state. Under the laws of some states, the right to the custody of abandoned property vests in the state after the property has remained unclaimed for a requisite period of time, but the state never acquires the technical title to the property. The revised definition in subdivision (c) makes it clear that this transfer of the right to custody is embraced in the term "escheat."

SEC. 2. The heading of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure is amended to read:

CHAPTER 7 UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT LAW

SEC. 3. A new article heading is added immediately preceding Section 1500 of the Code of Civil Procedure, to read:

ARTICLE 1. SHORT TITLE AND DEFINITIONS

SEC. 4. Section 1500 of the Code of Civil Procedure is amended to read:

1500. This chapter may be cited as the Uniform Disposition of Unclaimed Property Act Law . None of the provisions of this chapter shall apply to any type of property received by the state under the provisions of Chapters 1 to 6, inclusive, of this title.

~~Comment.~~ This chapter has been substantially revised in order to harmonize its provisions with the recent decision of the United States Supreme Court in Texas v. New Jersey, 379 U.S. 674 (1965). The short title of the chapter has been revised, therefore, to reflect the fact that the chapter is no longer substantially the same as the Uniform Disposition of Unclaimed Property Act promulgated by the Commissioners on Uniform State Laws.

Although the provisions of this chapter do not apply to any type of property received by the state under Chapters 1-6 of this title, certain provisions in those chapters apply to this chapter. For example, Section 1300 provides that its definitions apply throughout this title. Therefore, the definition of "escheat" and "permanent escheat" that appear in that section govern the construction of this chapter as well as the construction of the other chapters in this title.

SEC. 5. Section 1501 of said code is amended to read:

1501. As used in this chapter, unless the context otherwise requires:

(a) "Banking organization" means any national or state bank, trust company, banking company, savings bank or institution for savings, safe deposit company, ~~or a private banker engaged-in-business-in-this~~ State, or any similar organization.

(b) "Business association" means any corporation (other than a public corporation ~~or utility~~), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals, including, but not by way of limitation, a banking organization, financial organization, and life insurance corporation.

(c) "Financial organization" means any federal or state savings and loan association, building and loan association, credit union, or investment company engaged-in-business-in-this-State, or any similar organization.

(d) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

(e) "Life insurance corporation" means any association or corporation transacting ~~within-this-State~~ the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity ~~other than any public corporation or~~ utility .

(h) "Utility" means any person who owns or operates ~~within this State~~ , for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Comment. The definitions in Section 1501 have been revised to reflect the fact that the revised chapter applies to persons in other states who are holding property belonging to another. All of the definitions have been revised, therefore, to eliminate any requirement that such persons be engaged in business in California.

The listing of certain additional organizations in subdivision (a) is intended to be clarifying and to eliminate whatever doubts there may be that the mentioned organizations are covered by the subdivision.

The reference to "utility" has been deleted from subdivision (b) as unnecessary in light of subdivision (d) of Section 1582, which is added by this statutory revision.

The words "federal or state" have been added to subdivision (c) to eliminate any uncertainty concerning whether all such organizations are covered by the chapter.

The reference to "any public corporation or utility" has been deleted from subdivision (g) as unnecessary in the light of Section 1582.

SEC. 6. Article 2 (commencing with Section 1510) is added to Chapter 7 of Title 10 of Part 3 of said code, to read:

ARTICLE 2. ESCHEAT OF UNCLAIMED PERSONAL PROPERTY

1510. Unless otherwise provided by statute of this state, intangible personal property escheats to this state under this chapter if the conditions for escheat described in Sections 1511 to 1517, inclusive, are satisfied, and if:

(a) The last known address of the owner appearing on the records of the holder is in this state; or

(b) No address of the owner appears on the records of the holder, and the holder is (1) domiciled in this state, or (2) a court of this state, or (3) a federal court within this state, or (4) a public corporation, public authority, or public officer of this state or a political subdivision thereof; or

(c) The last known address of the owner appearing on the records of the holder is in another state, and such other state makes no provision in its laws for the escheat of such property, and the holder is (1) domiciled in this state, or (2) a court of this state, or (3) a federal court within this state, or (4) a public corporation, public authority, or public officer of this state or a political subdivision thereof.

Comment. Section 1510 describes the types of abandoned intangible property that this state may claim by escheat under the rules laid down in Texas v. New Jersey, 379 U.S. 674 (1965). The United States Supreme Court held in

that case that intangible personal property that has been abandoned by its owner is subject to escheat only by the state of the last known address of the owner as indicated by the books and records of the debtor. Where the books and records of the debtor do not provide a record of the owner's last address, the Supreme Court held that the property is subject to escheat by the state where the debtor is domiciled. If the state of the owner's last known address does not provide for escheat, the Supreme Court held that the state of the debtor's domicile could escheat the property. Subdivisions (a), (b), and (c) of Section 1510 state these rules with some particularity. They will change the existing California statutory law and will provide a statutory basis for this state's assertion of any escheat claim that it has the power to make under the rules laid down by the United States Supreme Court.

SEC. 7. Section 1502 of said code is renumbered and amended to read:

~~1502.~~ 1511. Subject to Section 1510, the following property held or owing by a ~~banking-or-financial-organization-or~~ business association ~~is-presumed-abandoned~~ escheats to this state :

(a) Any demand, savings, or matured time deposit ~~made in this~~ State with a banking organization, together with any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where made in this state) exceed those set forth in schedules filed by the banking organization from time to time with the State Controller, unless the owner has, within 15 years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid ~~in-this-State~~ toward the purchase of shares or other interest in a financial organization or any deposit made therewith ~~in-this-State~~, and any interest or dividends thereon, excluding any reasonable service charges which may lawfully be withheld and which do not (where paid or made in this state) exceed those set forth in schedules filed by the financial organization from time to time with the State Controller, unless the owner has within 15 years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on any travelers check ~~is~~ issued ~~in this~~ State by a business association ~~maintaining its principal place of business in this State, or issued in this State by a banking or financial organization,~~ that has been outstanding for more than 15 years from the date of its issuance, unless the owner has within 15 years corresponded in writing with the business association ~~or banking or financial organization~~ concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with such ~~organization~~ or association.

(d) Any sum payable on any other written instruments issued in ~~this State~~ on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, drafts, certified checks, and money orders, that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, excluding any charges that may lawfully be withheld, unless the owner has within seven years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

(e) Any funds cash or other tangible personal property located in this state, and any intangible personal property , ~~tangible-or-intangible~~, after discharge of any lien or liens for storage charges, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box ~~in this~~ State on which the lease or rental period has expired due to nonpayment of rental charges or other reason, that have has been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

~~Nothing in this section shall be construed to relate to any instrument held or payable only outside the limits of the United States or payable only in currency other than United States currency, nor to any funds held only in or payable only in a foreign country.~~

Comment. Section 1511 is substantially the same as former Section 1502. The revisions made to the section make the section applicable to property held by out-of-state businesses as well as property held by businesses within this state.

SEC. 8. Section 1503 of said code is repealed.

1503.--(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this State.--If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b)--"Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy.--Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Comment. Section 1503 is superseded by Section 1512.

SEC. 9. Section 1512 is added to said code, to read:

1512. Subject to Section 1510, any funds held and owing by any life insurance corporation to an insured or annuitant, or other person entitled thereto, escheats to this state if unclaimed and unpaid for more than seven years after the funds became due and payable, as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. If it is not definite and certain from the records of the corporation what person is entitled to the funds, the last known address of the person entitled to the funds is deemed to be the same as the last known address of the insured or annuitant according to the records of the corporation. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has, within the preceding seven years, (a) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan or (b) corresponded in writing with the life insurance corporation concerning the policy. Any funds otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Comment. Section 1512 is in substance the same as former Section 1503 with such modifications as are necessary to provide for the escheat of property held by out-of-state life insurance corporations.

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SEC. 10. Section 1504 of said code is renumbered and amended to read:

~~1504.~~ 1513. (a) Subject to Section 1510, any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to its shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, escheats to this state. ~~is presumed abandoned if:~~

(1) ~~--It is held or owing by a business association organized under the laws of or created in this State; or~~

(2) ~~--It is held or owing by a business association doing business in this State, including a national banking association, but not organized under the laws of or created in this State, and the records of the business association indicate that the last known address of the person entitled thereto is in this State,~~

(b) Subject to Section 1510, any intangible interest in a business association, as evidenced by the stock records or membership records of the association, owned by a person who has not claimed a dividend escheated ~~presumed abandoned~~ under subdivision paragraph (a) of this section, and who has not corresponded in writing with the business association concerning such interest for 15 years following the time such dividend escheated, escheats to this state. ~~was presumed abandoned, is presumed abandoned if:~~

(1) ~~--The business association was organized under the laws of or created in this State; or~~

(2) --The-business-association-is-doing-business-in-this-State,
including-a-national-banking-association, but-was-not-organized
under-the-laws-of-or-created-in-this-State,-and-the-records-of-the
business-association-indicate-that-the-last-known-address-of-the
person-entitled-to-such-interest-is-in-this-State.

For the purposes of this chapter the business association with
respect to such interest shall be deemed a holder.

(c) Subject to Section 1510, any dividends or other distributions
held for or owing to a person at the time the stock or other security
to which they attach became-presumptively-abandoned-are-also-presumed
abandoned escheats to this state also escheat to this state as of the
same time.

Comment. Section 1513 is substantially the same as former Section 1504.
The revisions made to the section are those necessary to provide for the
escheat of property held by out-of-state business associations as well as
business associations within this state.

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SEC. 11. Section 1505 of said code is repealed.

~~1505.--All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this State, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.~~

Comment. Section 1505 is superseded by Section 1514.

SEC. 12. Section 1514 is added to said code, to read:

read:

1514. Subject to Section 1510, all tangible personal property located in this state, and all intangible property, distributable in the course of a voluntary or involuntary dissolution or liquidation of a business association that is unclaimed by the owner at the date of final distribution or liquidation escheats to this state.

Comment. Section 1514 is similar to former Section 1505. Unlike the former section, however, Section 1514 applies to tangible personal property located in this state as well as intangible personal property. Section 1514 also extends the state's escheat claim to property distributable by any business association whether or not organized under the laws of this state. Section 1514 provides that the property escheats at the time of final distribution or liquidation of the business association's assets. Under the former section, the state's claim to the property did not arise until two years after the date for final distribution. Inasmuch as property escheated to this state under Section 1514 remains subject to the owner's claim for several years, there appears to be no reason to postpone the transfer of the custody of the property to the state.

SEC. 13. Section 1506 of said code is renumbered and amended to read:

~~1506.~~ 1515. Subject to Section 1510, all intangible personal property and any income or increment thereof, held in a fiduciary capacity for the benefit of another person ~~is presumed abandoned~~ escheats to this state unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary : .

~~(a)--If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this State; or~~

~~(b)--If it is held by a business association, banking organization, or financial organization (including a national banking association) doing business in this State, but not organized under the laws of or created in this State, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this State; or~~

~~(c)--If it is held in this State by another person.~~

For the purpose of this section, when a ~~banking organization (including a national banking association)~~, a business association, or a person holds the above described property as an agent for a business association, such holder shall be deemed to hold such property in a fiduciary capacity for the business association alone, unless the agreement between such a holder and such a business association clearly provides the contrary. In the event such property is deemed held for the business association alone such association shall be deemed the holder of such property for all purposes contemplated by this chapter.

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Comment. Section 1515 is substantially the same as former Section 1506. The revisions made to the section are those necessary to make the section applicable to fiduciaries and business associations wherever located.

SEC. 14. Section 1507 of said code is renumbered and amended to read:

~~1507.~~ 1516. Subject to ~~the provisions of Section 1526~~
Sections 1510 and 1582 , all tangible personal property located in
this state, and all intangible personal property , held for the owner
by any court, including a federal court, public corporation,
public authority, or public officer of ~~this~~ any state, or a political
subdivision thereof, that has remained unclaimed by the owner for more
than seven years ~~is presumed abandoned~~ escheats to this state .

Comment. Section 1516 is substantially the same as former Section 1507.
The section is modified to make it applicable to tangible as well as intangible
property and to make it applicable to intangible property no matter where the
holder of such property may be located.

SEC. 15. Section 1508 of said code is renumbered and amended to read:

~~1508.~~ 1517. Subject to Section 1510, all tangible personal property located in this state and all intangible personal property, except property of the classes mentioned in Sections ~~1502,-1503,-1504,~~ ~~1505,-1506,-and-1507-of-this-code~~ 1511, 1512, 1513, 1514, 1515, and 1516 , including any income or increment thereon and deducting any lawful charges, that is held or owing ~~in this State~~ in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed-abandoned escheats to this state .

Comment. Section 1517 is substantially the same as former Section 1508. The section is modified to make it applicable to tangible as well as intangible property and to make it applicable to intangible property no matter where the holder of such property may be located.

SEC. 16. Section 1509 of said code is repealed.

~~1509.--If specific property which is subject to the provisions of Sections 1502, 1504, 1505, 1506, and 1508 of this code is held for or owed--or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this State and subject to this chapter if:~~

~~(a)--It may be claimed as abandoned or escheated under the laws of such other state; and~~

~~(b)--The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed--or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.~~

Comment. Section 1509 is inconsistent with the Supreme Court's decision in Texas v. New Jersey, 379 U.S. 674 (1965), and the revisions made in this chapter to conform to that decision. Hence, Section 1509 is repealed.

SEC. 17. A new article heading is added immediately preceding Section 1510 of said code, which section is renumbered as Section 1530 by this act, to read:

ARTICLE 3. IDENTIFICATION AND DISPOSITION OF ESCHEATED PROPERTY

SEC. 18. Section 1510 of said code is renumbered and amended to read:

~~1510.~~ 1530. (a) Every person holding funds or other property ~~,-tangible-or-intangible,-presumed-abandoned~~ escheated to this state under this chapter shall report to the State Controller with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of more than ten dollars (\$10) ~~or more-preserved-abandoned~~ escheated under this chapter;

(2) In case of ~~unclaimed~~ funds of life insurance corporations, the full name of the insured, ~~or annuitant~~, or beneficiary and his last known address according to the life insurance corporation's records;

(3) In case of ~~money~~ cash or other ~~personal~~ property removed from a safe deposit box or other repository or agency, reference to such property. The report shall set forth any amounts owing to the holder for unpaid rent and for the cost of opening the safe deposit box.

(4) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value ~~under~~ of ten dollars (\$10) or less each may be reported in aggregate;

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(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(6) Other information which the State Controller prescribes by rule as necessary for the administration of this chapter.

(c) ~~If the person holding property presumed abandoned holder~~ is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

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(d) The report shall be filed before November 1st of each year as of June 30th or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The State Controller may postpone the reporting date upon his own motion or upon written request by any person required to file a report.

(e) ~~--If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed.--The holder shall exercise reasonable diligence to ascertain the whereabouts of the owner.~~

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(f) (e) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) --The initial report filed under this chapter shall include all items of property held for another person which are ascertainable from the available records of the holder, which items of property would have been presumed abandoned if this chapter had been in effect at and after the time such property first became payable, demandable or returnable; provided, that only such moneys which first became unclaimed funds, as that term is defined in this chapter, within three years preceding the effective date of this chapter must be included within the initial report and any other moneys constituting unclaimed funds as thus defined may be included within the initial or any subsequent report and if so included the holder shall be entitled to the protection afforded by Section 1513. -- All items of property, less proper charges and offsets, other than unclaimed funds, which on January 1, 1949 appeared from the available records to be held for another person and were thereafter without notice to the owner or without prior approval of any regulatory or licensing authority of this State transferred or credited by the holder directly to capital or surplus or undivided profits shall be deemed to be subject to the provisions of this chapter and shall be included within the initial report.

Comment. Section 1530 is substantially the same as former Section 1510. The changes made in the section are, for the most part, technical and are necessary to conform the section to the remainder of the chapter.

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The items that a holder may report in the aggregate have been changed from those of less than \$10 to those of \$10 or less, so that the items that do not have to be separately stated will be those that correspond with the amount the Controller may charge for servicing the property under Section 1540(d).

Former subdivision (e) has been omitted because subdivision (e) merely duplicated the notice requirement of subdivision (d) of Section 1531.

Former subdivision (g) has been omitted because it was a temporary provision governing the property subject to the reporting requirement as of September 18, 1959. Section 47 of this statute preserves the force of subdivision (g) to the extent that it is needed.

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SEC. 19. Section 1511 of said code is renumbered and amended to read:

1511. 1531. (a) Within ~~120 days~~ three months from the final date for filing the reports required by Section ~~1510~~ 1530, the State Controller shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the ~~abandoned~~ escheated property has his principal place of business within this state.

(b) The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Controller.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction ~~within 65 days from the date of the second published notice;~~ before a date specified in the notice (which shall be the date five months from the final date for filing the report), the ~~abandoned~~ property will be placed not later than ~~85 days~~ one month after such publication date in the custody of the State Controller and all further claims must thereafter be directed to the State Controller.

(4) A statement that if no claim is filed with the State Controller within five years after the close of the calendar year in which the property is paid or delivered to the State Controller, the property will permanently escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

(c) The State Controller is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless he deems such publication to be in the public interest.

(d) Within ~~120 days~~ three months from the ~~receipt of the~~ final date for filing a report required by Section ~~1510~~ 1530, the State Controller shall mail a notice to each person having an address listed therein who appears to be entitled to property ~~of the value of twenty-five dollars (\$25) or more presumed abandoned~~ escheated under this chapter.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Controller, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the State

Controller and all further claims must be directed to the State Controller.

(4) A statement that if no claim is filed with the State Controller within five years after the close of the calendar year in which the property is paid or delivered to the State Controller, the property will permanently escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

Comment. Section 1531 is substantially the same as former Section 1511. Section 1532 requires holders to remit their payments to the State Controller six months, instead of seven months (as previously required), after the final date for filing reports. In order to provide an owner with adequate notice and opportunity to claim his property, the time limits in Section 1531 have been revised to fit into the revised timetable prescribed by Section 1532.

A paragraph (4) has been added to subdivisions (b) and (e) to conform with Section 1550. Subdivision (d) has been revised to require the State Controller to send a notice to all persons who may claim property held for them by a holder or the State Controller under this chapter. Former subdivision (e) of Section 1530 required the holder alone to send notices to owners of property valued at less than \$25. This burden has been transferred to the State Controller because the state, not the holder, will eventually succeed to the property. As the state receives substantial benefits as the ultimate successor to unclaimed property, it should also bear whatever burdens of notice are required to accomplish the escheat of such property.

SEC. 20. Section 1512 of said code is renumbered and amended to read:

~~1512.~~ 1532. Every person who has filed a report as provided by Section ~~1510~~ 1530 shall, within ~~seven~~ six months from the final date for filing reports as required by Section ~~1510~~ 1530 , pay or deliver to the State Controller all ~~abandoned~~ escheated property specified in the report ~~;-provided;-that~~ . However, if the owner establishes his right to receive any ~~abandoned~~ such property to the satisfaction of the holder before such property has been delivered to the State Controller, or if it appears that for some other reason the ~~presumption of abandonment is erroneous~~ property is not subject to escheat under this chapter , the holder need not pay or deliver the property , ~~which will no longer be presumed abandoned;~~ to the State Controller, but in lieu thereof shall file with the State Controller a written explanation of the proof of claim or of the ~~error in the presumption of abandonment~~ reason the property is not subject to escheat . The holder of any interest under subdivision (b) of Section 1504(b) 1513 shall deliver a duplicate certificate to the State Controller. Upon delivery of a duplicate certificate to the State Controller, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate shall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate ~~presumed abandoned~~ or the duplicate of such certificate issued to the State Controller for any losses or damages resulting to such person by the issuance and delivery to the State Controller of such duplicate certificate.

Comment. Section 1532 is substantially the same as former Section 1512. The revisions of the section are, for the most part, technical. The time period for remitting escheated property to the Controller has been shortened from seven to six months from the final date for filing reports so that the property may be received by the State Controller in some month other than the last month of the fiscal year.

SEC. 21. Section 1516 of said code is renumbered and amended to read:

~~1516~~ 1533. (a) All abandoned escheated property other than money and securities listed on any established stock exchange delivered to the State Controller under this chapter shall be sold by the State Controller to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The State Controller may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

Securities listed on an established stock exchange shall be sold at the prevailing prices on said exchange.

(b) Any sale of abandoned escheated property, other than money and securities listed on any established stock exchange, held under this section shall be preceded by a single publication of notice thereof, at least one week in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the State Controller pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Controller shall execute all documents necessary to complete the transfer of title.

(d) No action shall be brought or maintained by any person against the state or any officer thereof for or on account of any transaction entered into pursuant to and in accordance with the provisions of this section.

Comment. Section 1533 is substantially the same as former Section 1516.

SEC. 22. Section 1517 of said code is renumbered and amended to read:

~~1517.~~ 1534. (a) All money received under this chapter, including the proceeds from the sale of property under Section ~~1516~~ 1533 , shall be deposited in the Unclaimed Property Fund in an account titled "Abandoned Property."

(b) All money in the abandoned property account in the Unclaimed Property Fund is hereby continuously appropriated to the State Controller, without regard to fiscal years, for expenditure ~~for~~ in accordance with law in carrying out and enforcing the provisions of this chapter, including, but not limited to, the following purposes:

(1) For payment of claims allowed by the State Controller under the provisions of ~~Section 1519;~~ this chapter.

(2) For refund, to the person making such deposit, of amounts, including overpayments, deposited in error in such fund ; .

(3) For payment of the cost of appraisals incurred by the State Controller covering property held in the name of an account in such fund ; .

(4) For payment of the cost incurred by the State Controller covering the purchase of lost instrument indemnity bonds, or for payment to the person entitled thereto, for any unpaid lawful charges or costs which arose from holding any specific property or any specific funds which were delivered or paid to the State Controller, or which arose from complying with this chapter with respect to such property or funds ; .

(5) For payment of amounts required to be paid by the state as trustee, bailee, or successor in interest to the preceding owner ; .

(6) For payment of costs incurred by the State Controller for the repair, maintenance and upkeep of property held in the name of an account in such fund ; .

(7) For payment of costs of official advertising in connection with the sale of property held in the name of an account in such fund ; .

(8) For transfer to the General Fund as provided in paragraph subdivision (c) of this section .

(c) At the end of each month, or oftener if he deems it advisable, the State Controller shall transfer all money in the abandoned property account in excess of fifty thousand dollars (\$50,000), to the General Fund. Before making this transfer, he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned escheated property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, and the name of the corporation. The record shall be available for public inspection at all reasonable business hours.

Comment. Section 1534 is substantially the same as former Section 1517. The preliminary language of subdivision (b) has been modified to broaden the purposes for which the money in the abandoned property account may be expended. Certain expenses that the Controller is authorized to incur in the administration of this fund are not clearly included among the specific purposes listed in subdivision (b). For example, litigation costs incurred under Sections 1571-1573 are not clearly covered by the itemized list. The revised language eliminates any uncertainty over the availability of the fund for such ordinary administrative expenses.

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SEC. 23. Section 1521 of said code is renumbered and amended to read:

~~1521.~~ 1535. Any property delivered to the State Controller pursuant to this chapter which has no obvious commercial value shall be retained by the State Controller until such time as he determines to destroy or otherwise dispose of ~~the-same~~ it . If the State Controller determines that any property delivered to him pursuant to this chapter has no obvious commercial value, he may at any time thereafter destroy or otherwise dispose of the ~~same~~ property , and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof or against the holder for or on account of any action taken by the State Controller pursuant to this chapter with respect to ~~said~~ the property.

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Comment. Section 1535 is substantially the same as former Section 1521.

SEC. 24. Article 4 (commencing with Section 1540) is added to Chapter 7 of Title 10 of Part 3 of said code, to read:

ARTICLE 4. PAYMENT OF CLAIMS

1540. (a) Any person, not including another state, claiming an interest in property paid or delivered to the State Controller under this chapter may file a claim thereto or to the net proceeds of the sale thereof at any time before such property is permanently escheated to the state under this chapter. The claim shall be on a form prescribed by the State Controller and shall be personally verified by the claimant.

(b) The State Controller shall consider each claim within 90 days after it is filed. He may hold a hearing and receive evidence concerning the claim. If a hearing is held, the State Controller shall make a written finding on each claim presented or heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be of public record.

(c) There shall be deducted by the State Controller from the amount of any allowed and approved claim under this section, one percent of the total amount of such claim, but in no event less than ten dollars (\$10), for each individual share claimed, as a service charge for the receipt, accounting for, and management of the money or other property claimed and for the processing of the claim filed to recover the same.

Comment. Section 1540 repeats in substance the provisions of former Sections 1518 and 1519. Although the time limit specified in subdivision (b) did not appear in either of the superseded sections, it did appear from the provisions of former Section 1520 (superseded by Section 1541).

SEC. 25. Section 1518 of said code is repealed.

~~1518.--Any person claiming an interest in any property delivered to the State under this chapter may file a personally verified claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Controller.~~

Comment. Section 1518 is superseded by Section 1540.

SEC. 26. Section 1519 of said code is repealed.

~~1519.--(a)--The State Controller shall consider any claim filed under this chapter and may hold a hearing and receive evidence concerning it.--If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision.--The decision shall be a public record.~~

~~(b)--There shall be deducted by the State Controller from the amount of any allowed and approved claim under this section, 1 percent of the total amount of such claim, but in no event less than ten dollars (\$10), for each individual share claimed, as a service charge for the receipt, accounting for, and management of the money or other property claimed and for the processing of the claim filed to recover the same.~~

Comment. Section 1519 is superseded by Section 1540.

SEC. 27. Section 1520 of said code is renumbered and amended to read:

~~1520.~~ 1541. Any person aggrieved by a decision of the State Controller or as to whose claim the Controller has failed to act within 90 days after the filing of the claim, may file a petition to establish his claim in the superior court in any county or city and county in which the Attorney General has an office. The proceeding shall be brought within 90 days after the decision of the State Controller or within 180 days from the filing of the claim if the State Controller fails to act. A copy of the petition and of a notice of hearing shall be served upon the State Controller and the Attorney General and the Attorney General shall have ~~not less than 30~~ 60 days within which to respond by answer. In lieu of answer, the Attorney General may file a statement of noninterest whereupon the petitioner shall present to the court his ~~prima facie proof~~ evidence of entitlement. The proceeding shall be tried without a jury. If judgment is awarded in favor of petitioner, the State Controller shall make payment subject to any charges provided by subdivision (d) of Section 1519(b) 1540 . No costs of trial shall be allowed for or against the petitioner.

Comment. Section 1541 is substantially the same as former Section 1520. The former section did not provide a time limit within which the Attorney General is required to respond by answer. The revised section does contain such a limit.

SEC. 28. Section 1542 is added to said code, to read:

1542. (a) At any time after property has been paid or delivered to the State Controller under this chapter, and notwithstanding the permanent escheat of such property pursuant to Section 1550 or 1551, any other state is entitled to recover such property if:

(1) The property escheated to this state under subdivision (b) of Section 1510 because no address of the owner of the property appeared on the records of the holder when the property was escheated under this chapter and the last known address of the owner was in fact in such other state; or

(2) The property escheated to this state under subdivision (c) of Section 1510 because the last known address of the owner of the property appearing on the records of the holder was in such other state when the property was escheated under this chapter and such other state at that time did not provide in its laws for the escheat of such property, but currently so provides.

(b) The claim of another state to recover escheated property under this section shall be presented in writing to the State Controller, who shall hold a hearing on each such claim within 90 days after it is presented. He shall make a written finding on each claim heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be of public record. He shall allow a claim if reasonably satisfied of the right of the other state to recover the escheated property. Any claim allowed under this section is subject to any charges provided in subdivision (c) of Section 1540.

Comment. Section 1542 has no counterpart in the previous statutory law of California. It is necessary, however, to provide a procedural means for this state to comply with the decision in Texas v. New Jersey, 379 U.S. 674 (1965). The United States Supreme Court in that case held that property escheated by one state under the conditions that are now specified in subdivisions (b) and (c) of Section 1510 could subsequently be claimed by another state under the circumstances described in subdivision (a) of Section 1542. Section 1542 provides the administrative procedure for handling such claims.

SEC. 29. Article 5 (commencing with Section 1550) is added to Chapter 7 of Title 10 of Part 3 of said code, to read:

ARTICLE 5. PERMANENT ESCHEAT

1550. (a) At any time after the close of the fifth calendar year after the year in which any property escheated under this chapter is paid or delivered to the State Controller, if no claim therefor has been made and established by any person, not including another state, entitled thereto, the State Controller may commence a civil action in the superior court for Sacramento County for a determination that such property shall permanently escheat to the state; but if at the expiration of such fifth year, an action previously brought by a claimant under Section 1541 is pending, or if a person who has filed a claim to the property under Section 1540 remains entitled at the expiration of such fifth year to bring a court action under Section 1541, the State Controller may not commence his civil action until after a final court judgment has been rendered adversely to the petitioning claimant, or until after the expiration of the period in which a claimant would be entitled to bring a court action under Section 1541.

(b) At the time such action is commenced, the State Controller shall cause notice thereof to be published once each week for two successive weeks in a newspaper having general circulation in the county in which is situated the last known address of the owner according to the records of the State Controller. If no address is listed, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state. Such notice shall be entitled "Notice of Proceedings to Declare Certain

Abandoned Property Permanently Escheated to the State of California" and shall include the following matters:

- (1) The name of the owner and his last known address, if known.
- (2) A brief description of the property.
- (3) The name of the prior holder or holders.
- (4) The amount or value of the property.
- (5) A statement that a complaint has been filed in the action for permanent escheat.
- (6) The place, time, and date of the hearing.
- (7) A direction that unless any person claiming to be entitled to the property, or his representative, makes claim for the property in the manner provided in Section 1540 before the hearing, or appears at the hearing to substantiate his claim, the property will permanently escheat to the state and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

(c) At the time such action is commenced, the State Controller shall mail to the last known address of the owner according to the records of the State Controller a notice alike in all respects to the published notice required under subsection (b).

(d) The court shall enter a judgment that the subject property has permanently escheated to the state and that all right, title, or interest therein of the owners is terminated and all claims of the owners thereto forever barred if the court is satisfied by evidence that the State Controller has complied with this chapter, and:

- (1) No person files a claim or appears at the hearing to present a claim; or

(2) The court determines that a claimant is not entitled to the property claimed by him.

Comment. Sections 1550 and 1551 have been added to this chapter in order to harmonize the escheat provisions of this chapter with the escheat provisions appearing in Chapters 1-6 (Sections 1300-1476) of the title on unclaimed property. The earlier escheat provisions all provide for the permanent escheat of property that is paid or delivered to the State Controller after a requisite period of time has elapsed within which the owner may claim the property. This procedure permits the Controller to clear his books in regard to such property. Sections 1550 and 1551 provide a comparable procedure for the permanent escheat of property paid or delivered to the State Controller under this chapter.

Section 1550 describes a procedure which must be followed to accomplish the permanent escheat of all property valued at more than \$1,000 and which may be followed to accomplish the permanent escheat of any property. Section 1551 describes an alternate procedure which may be followed for the permanent escheat of property valued at \$1,000 or less.

1551. (a) At any time after any money or other personal property of a value of \$1,000 or less has heretofore been or is hereafter paid or delivered to the State Controller as escheated property pursuant to this chapter, the State Controller may, in lieu of the procedure provided in Section 1550, prepare a return listing such property and give notice thereof in the manner provided in this section.

(b) The return shall list each item and show all of the following:

(1) The amount of the property, if money, or a description thereof if other than money.

(2) The name of the owner or claimant and his last known address, if known.

(3) The name and address of the person delivering the property to the State Controller.

(4) The facts and circumstances by virtue of which it is claimed the property has escheated or vested in the State.

(5) Such other information as the State Controller may desire to include to assist in identifying each item.

(c) When the return has been completed, the Controller shall prepare, date, and attach thereto a notice that the property listed in the return has escheated or vested in the state. Copies of such return and notice shall then be displayed and be open to public inspection during business hours in at least three offices of the Controller, one in the City of Sacramento, one in the City and County of San Francisco, and one in the City of Los Angeles.

(d) The Controller shall then cause notice to be given by publication in one newspaper of general circulation published in the City of Sacramento, in one newspaper of general circulation published in the City of San Francisco, and in one newspaper of general circulation published in the City of Los Angeles, at least once each calendar week for four consecutive weeks, that the return and notice that the property listed in the return has escheated or vested in the state has been prepared and is on display and open to public inspection during business hours, giving the addresses and room numbers of the locations where the return may be inspected. Such publication shall be made within 90 days after attaching the notice to the return. Notice by such publication shall be deemed completed four months after attaching the notice to the return.

(e) Within five years after such notice by publication is completed, any person entitled to such property may claim it in the manner provided in Section 1540. All persons who fail to make such claim within the time limited are forever barred and the property is permanently escheated to the state except that infants and persons of unsound mind have the right to appear and claim such property at any time within the time limited, or within one year after their respective disabilities cease, whichever is the later date.

Comment. Section 1551 describes a procedure which may be followed by the Controller to permanently escheat property valued at \$1,000 or less. Section 1551 follows closely the provisions of Section 1415. The section permits the State Controller to proceed by notice only in those cases where the amount of the property involved does not warrant the expense that would be incurred in a judicial proceeding to escheat the property.

SEC. 30. A new article heading is added immediately preceding Section 1513 of said code, which section is renumbered as Section 1560 by this act, such new article heading to read:

ARTICLE 6. OBLIGATIONS OF HOLDER AFTER PAYMENT OR DELIVERY

SEC. 31. Section 1513 of said code is renumbered and amended to read:

~~1513.~~ 1560. Upon the payment or delivery of abandoned escheated property to the State Controller, the state shall assume custody and shall be responsible for the safekeeping thereof of the property . Any person who pays or delivers abandoned property to the State Controller under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Property removed from a safe deposit box or other repository shall be received by the State Controller subject to any valid lien of the holder for rent and other charges, such rent and other charges to be paid out of the proceeds remaining after the State Controller has deducted therefrom his selling cost. ~~Any holder who has paid moneys to the State Controller pursuant to this chapter may make payment to any person appearing to such holder to be entitled thereto, and upon filing proof of such payment and proof that the payee was entitled thereto, the State Controller shall forthwith reimburse the holder for the payment.~~

~~Any holder who has delivered personal property including a certificate of any interest in a business association to the State Controller pursuant to this chapter may reclaim such personal property if still in the possession of the State Controller without payment of any fee or other charges upon filing proof that the owner thereof has claimed such personal property from such holder.~~

Comment. Section 1560 is substantially the same as former Section 1513. Provisions that appeared in the former section permitting the holder to reclaim escheated property for the purpose of paying it to the true owner have been deleted as unnecessary. The owner can claim the property directly from the Controller. The former holder, having paid or delivered the property to the Controller, has no interest in resisting a claim by an alleged former owner. It seems inadvisable, therefore, to permit an alleged former owner to process his claim through a former holder and thus avoid subjecting his claim to the scrutiny of the Controller.

SEC. 32. Section 1514 of said code is renumbered and amended to read:

~~1514.~~ 1561. When property other than money is delivered to the State Controller under this chapter, any dividends, interest or other increments realized or accruing on such property at or prior to liquidation or conversion thereof into money, shall upon receipt be credited to the owner's account by the State Controller. Except for amounts so credited the owner is not entitled to receive income or other increments on money or other property paid or delivered to the State Controller under this chapter. All interest received and other income derived from the investment of moneys deposited in the Unclaimed Property Fund under the provisions of this chapter shall, on order of the State Controller, be transferred to the General Fund.

Comment. Section 1561 is the same as former Section 1514.

SEC. 33. A new article heading is added immediately preceding Section 1515 of said code, which section is renumbered as Section 1570 by this act, such new article heading to read:

ARTICLE 7. COMPLIANCE AND ENFORCEMENT

SEC. 34. Section 1515 of said code is renumbered and amended to read:

~~1515.~~ 1570. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, ~~shall~~ does not prevent the money or property from being ~~presumed-abandoned-property~~ escheated , nor affect any duty to file a report required by this chapter or to pay or deliver ~~abandoned~~ escheated property to the State Controller.

Comment. Section 1570 is substantially the same as former Section 1515.

SEC. 35. Section 1523 of said code is repealed.

~~1523.--If-any-person-refuses-to-deliver-property-to-the-State
Controller-as-required-under-this-chapter,-the-State-Controller-shall
bring-an-action-in-a-court-of-appropriate-jurisdiction-to-enforce-such
delivery:~~

Comment. Section 1523 has been superseded by the provisions of
Section 1571.

SEC. 36. Section 1571 is added to said code, to read:

1571. (a) The State Controller may bring an action in a court of appropriate jurisdiction, as specified in this section, for any of the following purposes:

(1) To enforce the duty of any person under this chapter to permit the examination of the records of such person.

(2) For a judicial determination that particular property known by the State Controller to be held by any person is subject under law to escheat by this state pursuant to this chapter.

(3) To enforce the delivery of any property to the State Controller as required under this chapter.

(b) The State Controller may bring an action under this chapter in any court of this state of appropriate jurisdiction in any of the following cases:

(1) Where the holder is any person domiciled in this state, including any business association organized under the laws of, or created in, this state, and any national bank, or federal savings and loan association located in this state, but not including any federal court within this state.

(2) Where the holder is any person engaged in or transacting business in this state, although not domiciled in this state.

(3) Where the property is tangible personal property and is held in this state.

C

(4) Where the holder is any court of this state, or any public corporation, public authority, or public officer of this state, or a political subdivision of this state.

(c) In any case where no court of this state can obtain jurisdiction over the holder, the State Controller may bring an action in any federal or state court with jurisdiction over the holder.

Comment. Section 1571 is designed to clarify the circumstances under which the State Controller may sue in the courts of this state or another state or in the federal courts to enforce compliance with the provisions of this chapter. The section generally requires the State Controller to proceed in the California courts unless the California courts cannot obtain jurisdiction over the holder.

C

SEC. 37. Section 1572 is added to said code, to read:

1572. At the request of any other state, the Attorney General of this state is empowered to bring an action in the name of such other state in any court of this state or federal court within this state, to enforce the unclaimed property laws of such other state against a holder in this state of property lawfully subject to escheat by such other state, if all of the following exist:

(a) The courts of such other state cannot obtain jurisdiction over the holder.

(b) Such other state makes reciprocal provision in its laws for the bringing of an action by an officer of such other state in the name of this state at the request of the Attorney General of this state, to enforce the provisions of this chapter against any person in such other state believed by the State Controller of this state to hold property subject to escheat under this chapter, where the courts of this state cannot obtain jurisdiction over such person.

(c) The laws of such other state provide for payment to this state of reasonable costs incurred by the Attorney General of this state in bringing an action under this section at the request of such other state.

Comment. Section 1572 authorizes the Attorney General to sue in this state to enforce compliance with the unclaimed property laws of another state. Under the provisions of Section 1572, however, the Attorney General may do so only if the other state will similarly act to enforce the unclaimed property laws of California against holders of unclaimed property to which California is entitled.

SEC. 38. Section 1573 is added to said code, to read:

1573. (a) If a person in another state is believed by the State Controller of this state to hold property subject to escheat under this chapter and the courts of this state cannot obtain jurisdiction over such person, the Attorney General of this state may request an officer of such other state to bring an action in the name of this state to enforce the provisions of this chapter against such person.

(b) This state shall pay all reasonable costs incurred by any other state in any action brought by such other state at the request of the Attorney General of this state under this section. Any state bringing such action shall be entitled additionally to a reward of fifteen percent of the value, after deducting reasonable costs, of any property recovered for the state as a direct or indirect result of such action, such reward to be paid by the State Controller. Any costs or rewards paid pursuant to this section shall be paid from the abandoned property account in the Unclaimed Property Fund and shall not be deducted from the amount that is subject to be claimed by the owner in accordance with this chapter.

Comment. Section 1573 authorizes this state to request the officials of another state to bring action to recover property escheated to California under the provisions of this chapter. In order to provide an incentive for the recovery of such escheated property, the section authorizes the payment of a fifteen percent reward for the recovery of escheated property. This reward, however, is not paid from the escheated property itself. It would be inappropriate to charge the owner of the property with this fifteen percent in the event he should later recover this property, for California's claim to the property is not made for the owner's benefit, it is made for the state's own benefit.

SEC. 39. Section 152⁴ of said code is renumbered and amended to read:

~~1524.~~ 1574. (a) Any person who wilfully fails to render any report or perform other duties required under this chapter shall be punished by a fine of ten dollars (\$10) for each day such report is withheld, but not more than one thousand dollars (\$1,000).

(b) Any person who wilfully refuses to pay or deliver ~~abandoned~~ escheated property to the State Controller as required under this chapter shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than six months, or both, in the discretion of the court.

Comment. Section 157⁴ is substantially the same as former Section 152⁴.

SEC. 40. A new article heading is added immediately preceding Section 1525 of said code, which section is renumbered as Section 1580 by this act, such new article heading to read:

ARTICLE 8. MISCELLANEOUS

SEC. 41. Section 1525 of said code is renumbered and amended to read:

~~1525.~~ 1580. The State Controller is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter.

Comment. Section 1580 is the same as former Section 1525.

SEC. 42. Section 1522 of said code is renumbered and amended to read:

~~1522.~~ 1581. (a) The State Controller may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

(b) When requested by the State Controller, such examination shall be conducted by any licensing or regulating agency otherwise empowered by the laws of this state to examine the records of the holder. For the purpose of determining compliance with this chapter, the Superintendent of Banks and the Savings and Loan Commissioner are hereby respectively vested with full authority to examine the records of any banking organization and any savings and loan association doing business within this state but not organized under the laws of or created in this state.

Comment. Section 1581 is substantially the same as former Section 1522.

SEC. 43. Section 1526 of said code is renumbered and amended to read:

~~1526.~~ 1582. This chapter ~~shall~~ does not apply to :

(a) Any property that ~~has been--presumed--abandoned--or~~ was escheated under the laws of another state prior to the ~~effective date of this chapter;~~ ~~nor shall this chapter apply to~~ September 18, 1959.

(b) Any property in the official custody of a municipal utility district ~~;~~ ~~nor to~~ .

(c) Any property in the official custody of a local agency if such property may be transferred to the General Fund of such agency under the provisions of Sections 50050-50053 of the Government Code.

(d) Any property held for refund to customers of a utility pursuant to an order of the Public Utilities Commission of this state.

Comment. Section 1582 is substantially the same as former Section 1526. The provisions of subdivision (d) have been added to meet a problem that was met under the previous law by excluding utilities from the operation of this chapter entirely.

SEC. 44. Section 1527 of said code is renumbered and amended to read:

~~1527.~~ 1583. No agreement entered within nine months after the date of filing report under subdivision (d) of Section 1510(a) 1530 ~~shall be~~ is valid if any person thereby undertakes to locate property reported under Section ~~1510~~ 1530 for a fee or other compensation exceeding 10 percent of the value of recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof, as such facts are so reported . ; ~~provided, that~~ Nothing herein in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate property is based upon an excessive or unjust consideration.

Comment. Section 1583 is substantially the same as former Section 1527.

SEC. 45. Section 3081 of the Civil Code is repealed.

~~3081. Any corporation engaged in the business of renting to the public safe deposit boxes may dispose of the unclaimed contents of the safe deposit boxes in the manner set forth in Sections 30a to 30r, inclusive, of the Bank Act.~~

Comment. Section 3081 is superseded by the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

SEC. 46. Section 1614 of the Code of Civil Procedure is amended to read:

1614. Property received under this chapter shall be deposited or sold by the State Controller as though received under the Uniform Disposition of Unclaimed Property Act Chapter 7 (commencing with Section 1500) of this title . Property received under this chapter shall not be subject to claim within two years following the date upon which it is paid to or received by the state. Thereafter, claims shall be made in the manner provided in Chapter 7 of Title 10 of Part 3 of this code.

Comment. This is a technical, nonsubstantive amendment.

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SEC. 47. This act does not affect any duty to file a report with the State Controller or any duty to pay or deliver property to the State Controller that arose prior to the effective date of this act under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure. Any such report or any such payment or delivery shall be made in accordance with the law in effect prior to the effective date of this act as if this act had not been enacted.

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Comment. This act modifies the requirements for filing unclaimed property reports and delivering such property to the State Controller. It omits the provisions of former Section 1510(g), which prescribed the contents of the initial report to be filed under the Uniform Disposition of Unclaimed Property Act after it became effective on September 18, 1959. Section 46 is intended to make clear that the enactment of this act does not affect whatever obligation the provisions of the previous statute imposed upon persons who were subject to its terms in regard to filing reports and paying or delivering property to the State Controller.

II

An act to add Chapter 9 (commencing with Section 1620) to Title 10 of Part 3 of the Code of Civil Procedure, relating to the Unclaimed Property Compact.

The people of the State of California do enact as follows:

SECTION 1. Chapter 9 (commencing with Section 1620) is added to Title 10 of Part 3 of the Code of Civil Procedure, to read:

CHAPTER 9. UNCLAIMED PROPERTY COMPACT

1620. The Unclaimed Property Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

UNCLAIMED PROPERTY COMPACT

ARTICLE I

Purposes

It is the purpose of this compact and of the states party hereto:

- (a) To eliminate the risks and inconvenience to which holders of unclaimed property may be subject by reason of actual or possible claims thereto or to the custody thereof by more than one state.
- (b) To provide a uniform and equitable set of standards for the determination of entitlement to receive, hold and dispose of unclaimed property.
- (c) To provide methods whereby the party states may cooperate with each other in the discovery and taking possession of unclaimed property.

ARTICLE II

Definitions

As used in this compact, the term:

- (a) "Unclaimed property" means any property which under the laws of the appropriate state is subject to delivery to that state for its use or custody by reason of its having been unclaimed or abandoned for such period as the laws of that state may provide.

(b) "Holder" means any obligor or any individual, business association, government or subdivision thereof, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity having possession, custody or control of unclaimed property.

(c) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III

Determination of Entitlement to Unclaimed Property

(a) Only the state in which unclaimed real property or unclaimed tangible personal property is located shall be entitled to receive, hold and dispose of such property in accordance with its laws.

(b) In the case of unclaimed property the disposition of which is not determined by the application of paragraph (a) of this Article, and the holder of which property is subject to the jurisdiction of only one state, that state and no other shall be entitled to receive, hold and dispose of such unclaimed property in accordance with its laws.

(c) In respect of all unclaimed property the disposition of which is not determined by the application of paragraphs (a) or (b) of this Article, entitlement shall be determined as follows:

1. The state in which is located the last known address of the person entitled to the property shall be entitled to receive, hold and dispose of the same in accordance with its laws. The last known address shall be presumed to be that shown by the records of the holder.

2. If the identity of the person entitled is unknown; if no address for the person sufficient to meet the requirements of subparagraph 1 of this paragraph is known; or if the laws of the state of last known address do not subject the property in question to taking, the state under whose laws the holder is incorporated (if the holder is a corporation) or organized (if the holder is an association or artificial entity other than a corporation), or the state where the holder is domiciled (if the holder is a natural person) shall be entitled to receive, hold and dispose of the same in accordance with its laws. If the holder is incorporated or organized under the laws of more than one party state, such party states shall be entitled to take equal shares of the property covered by this paragraph. In such event, each shall bear a proportionate share of the costs of the taking.

3. If the disposition of any unclaimed property is not determined by application of any preceding provision of this Article,

the state in which is located the office of the holder making the largest total disbursements within its immediately preceding fiscal year shall be entitled to receive, hold and dispose of the property in accordance with its laws.

4. Whenever unclaimed property has been taken by a party state in accordance with this paragraph, within one year from the taking of such property, or within one year from the earliest time at which another party state would have been entitled to take the property in question pursuant to its unclaimed property laws, whichever date is later, any party state shall be entitled to establish the identity and last known address of an entitled person previously thought to be unknown, or to establish a later known address for an entitled person. Upon such establishment, and on the basis thereof a party state shall upon demand be entitled to receive the property from the state initially taking the same and to hold and dispose of it in accordance with its laws. This subparagraph shall not apply to a claim made by a state under a statute enacted subsequent to the time when the initial state took the property.

ARTICLE IV

Cooperation

The party states pledge to each other faithful cooperation in the administration of their respective unclaimed property laws. To this end, a party state shall, upon the request of any other party state, make available to any such state any information which it may have in its possession by reason of its administration of its own unclaimed property laws, unless disclosure thereof is expressly prohibited by the laws of the party state of which the request is made. Unless the party states concerned otherwise agree, the party state making a request for information pursuant to this Article shall be entitled to receive it only by bearing such costs as may be involved in furnishing the information requested.

ARTICLE V

State Laws Unaffected in Certain Respects

Each party state may enact and continue in force any statute not in conflict with this compact and may employ the enclose, custodial, or any other principle in respect of unclaimed property.

ARTICLE VI

Pinality

Except as provided in Article III (c) 4:

1. No unclaimed property escheated or received into the custody of a party state, prior to February 1, 1965, pursuant to its laws shall be subject to the subsequent claim of any other party state, and the enactment of this compact shall constitute a waiver by the enacting state of any such claim.

2. No unclaimed property escheated or received into the custody of a party state on or after February 1, 1965 shall be subject to the subsequent claim of any other party state, and the enactment of this compact shall constitute a waiver by the enacting state of any such claim; provided that such taking was consistent with the provisions of this compact.

ARTICLE VII

Extent of Rights Determined

The only rights determined by this compact shall be those of the party states. With respect to any non-party state, an assertion of jurisdiction to receive, hold or dispose of any unclaimed property made by a party state shall be determined in the same manner and on the same basis as in the absence of this compact. In any situation involving multiple claims by states, both party and non-party, the standards contained in this compact shall be used to determine entitlement only as among the party states. With respect to the claims of any non-party state any controversy shall be determined in accordance with the law as it may be in the absence of this compact. The enactment of this compact shall not constitute a waiver of any claim by a party state as against a non-party state.

ARTICLE VIII

Entry Into Force and Withdrawal

This compact shall enter into force and become binding as to any state when it has enacted the same into law. Any party state may withdraw from the compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive head of each other party state. Any unclaimed property which a state shall have received, or which it shall have become entitled to receive by operation of this compact during the period when such state was party hereto shall not be affected by such withdrawal.

ARTICLE IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

1621. The State Controller may enter into any agreements necessary or appropriate to cooperate with another state or states and sharing of costs pursuant to Article III(c)2 of the compact, or for the assumption or bearing of costs pursuant to Article IV thereof.

1622. With reference to this state and as used in Article VIII of the compact, the term "executive head" means the Governor.

III

An act to amend Section 231 of the Probate Code, relating to escheat.

The people of the State of California do enact as follows:

SECTION 1. Section 231 of the Probate Code is amended to read:

231. (a) If ~~the~~ a decedent leaves no one , other than a state or governmental entity, to take his estate or any portion thereof by intestate succession under the laws of this state or of any other jurisdiction, the same escheats ~~to the state at~~ as of the date time of the death of the decedent in accordance with subdivision (b).

(b) Notwithstanding Section 946 of the Civil Code, whether or not the decedent dies domiciled in this state:

(1) Real property located in this state and tangible personal property located in this state escheats to this state rather than to another jurisdiction.

(2) Except as otherwise required by the law of the United States or by a statute of this state, intangible personal property, wherever situated, escheats to this state rather than to another jurisdiction.

(c) Property passing to the state under this section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to the provisions of Title 10 of Part 3 of the Code of Civil Procedure relating to escheated estates.

(d) Notwithstanding any other section or provision of this code

or any other statute, rule, regulation, law , or decision, moneys held by a trust funds for the purposes of providing health and welfare, pension, vacation, severance, supplemental unemployment insurance benefits , or similar benefits shall not pass to the state or escheat to the state , but such moneys go to the trust fund holding them .

Comment. Section 231 sets forth the circumstances under which the property of a person who dies without heirs escheats to this state.

Subdivision (a) states the general rule that the estate of a person dying without heirs escheats to the state. Under the law of some jurisdictions, property does not escheat in the sense that it does under the law of California and most Anglo-American jurisdictions. Instead, the government inherits the property when there are no collateral kindred of the decedent within a specified degree of kinship. See Estate of Maldonado, [1954] P, 283, [1953] 2 All. E.R. 300 (C.A.). The revised language of subdivision (a) makes it clear that the claim of such a jurisdiction will not prevent the property of a decedent from escheating under the law of California.

Subdivision (b) describes the types of property that are subject to escheat to the State of California. Paragraph (1) provides that all real property and tangible personal property that is located within the state escheats to the State of California upon the death of its owner without heirs. Paragraph (1) restates the existing law insofar as it relates to real property, but it probably changes the existing law insofar as it relates to personal property. See Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955). In the Nolan case, the court held that real property within the state escheats to California but that personal property escheats to the government.

of the jurisdiction where the decedent was domiciled at his death. Although the personal property involved in the Nolan case was intangible property (bank accounts), the rationale and language of that case are applicable to tangible as well as intangible personal property. Under Section 231 as revised, however, it will be clear that tangible personal property within the state escheats to the State of California, not to the government of the decedent's domicile.

Paragraph (2) of subdivision (b) provides that all intangible personal property belonging to a person dying without heirs escheats to the State of California. The residence or domicile of the decedent is not determinative of the state's right of escheat under this paragraph, nor is the residence, domicile, or state of incorporation of the debtor or obligor. Under this paragraph, the State of California may claim the escheat of intangible personal property even though the decedent was not a domiciliary of California at his death and even though, for example, the bank account sought to be escheated is in an out-of-state bank. The only stated limitations on the state's right to escheat intangible property are those contained in the law of the United States and the statutes of California. There may be in some cases an additional practical limitation insofar as foreign assets are concerned that will result from the state's lack of jurisdiction over the decedent's representative or the obligor or both.

The limit of the right of escheat that the state may claim under paragraph (2) is not clear because the existing federal law is not clear. The United States Supreme Court has decided, in regard to the escheat of abandoned intangible property, that only one state may escheat the property and the proper state to exercise the right of escheat is the state of the last known residence of the owner as shown on the books of the debtor.

Texas v. New Jersey, 379 U.S. 674 (1965). But, it is impossible to determine whether this holding is applicable to the escheat of intangible property owned by a person who has died without heirs.

The right to escheat intangibles that is asserted in paragraph (2) changes the existing California law. Under Estate of Nolan, 135 Cal. App.2d 16, 286 P.2d 899 (1955), California asserts a right to escheat the intangibles owned by a person who has died without heirs only when the decedent was domiciled in California at his death. Thus, California permits other states to escheat the money left in California bank accounts by nondomiciliary decedents. Yet, some other states escheat the bank accounts and other intangible property left in those states by California domiciliaries who die without heirs. See In re Rapoport's Estate, 317 Mich. 291, 26 N.W.2d 777 (1947); In re Menscheftend's Estate, 283 App. Div. 463, 128 N.Y.S.2d 738 (1954). Paragraph (2) of subdivision (b) will permit California to assert a right to escheat intangibles where there is any basis--domicile of decedent, last address of decedent, domicile or location of debtor, etc.--for doing so until the United States Supreme Court establishes a uniform rule governing the escheat of decedents' property just as it has established a uniform rule governing the escheat of abandoned property.

Subdivisions (c) and (d) continue the law that was stated in the previous version of Section 231. The words added at the end of subdivision (d) are intended to be clarifying. The section did not indicate previously what disposition should be made of the unescheated property.

[Taken from 3 HARVARD JOURNAL ON LEGISLATION
pages 135-190 (December 1965)]

A State Statute for the Disposition of Unclaimed Property†

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This Bureau Draft utilizes the framework of the Uniform Disposition of Unclaimed Property Act and sets forth a proposal for the more effective capture of the Nation's growing quantum of unclaimed property. The statute specifically deals with the problem of conflicting claims by several states in response to the Supreme Court's recent opinion in Texas v. New Jersey, 379 U.S. 674 (1965).

I. INTRODUCTION

To states ever seeking new sources of non-tax revenue, the introduction of laws to capture potentially large sums in unclaimed personal property has become an attractive proposition. Little of such property is ever reclaimed by the persons entitled to it. The advantages of virtually perpetual state control of these funds, combined with a desire to prevent windfalls to the holders, have led ten states to enact their own comprehensive abandoned property statutes. Twelve other states have enacted either the modern Uniform Disposition of Unclaimed Property Act, 9A Uniform Laws Ann. 416 (1965) (hereinafter called the Uniform Act) or legislation based upon it.

At present, the law of many states does not reflect this trend toward comprehensive legislation for the purpose of tapping this rich source of revenue. Disconnected provisions for state custody and, in some cases, eventual escheat of some types of unclaimed personal property are scattered through state statutes, but procedures for capture vary from the mandatory and complex to the voluntary and simple. Many types of property that make up a large proportion of the abandoned property revenues of some states are not specifically covered in others.

This proposed statute is intended to bring escheat law up to date. Leaving intact existing provisions for immediate escheat of realty and personalty under the descent and distribution laws, the statute collects in one act most of the other law dealing with abandoned unclaimed personal property, tangible and intangible. The statute greatly expands the classes of property now subject

† See 1 HARV. J. LEGIS. 151 (1964) for the text of a proposed federal act to resolve conflicting state claims to abandoned property.

to a presumption of abandonment in many states. It provides a uniform procedure for the reporting, delivery, state custody, and final escheat of the property, as well as claim procedures and means by which the state treasurer can enforce the statute.

The statute is a thirty section adaptation of the basic property classifications and reporting procedures of the Uniform Act modified to accord with the recent decision in *Texas v. New Jersey*, 379 U.S. 674 (1965). Section 404, "Claims by other states," and section 602, "Enforcement," were added specifically because of the *Texas v. New Jersey* decision. Also, whereas the Uniform Act is purely "custodial" in nature, in that the state never takes absolute title, and claims for held property may be made at any time, this proposed act is of the combined custodial-escheat type enacted in 1962 by Connecticut. Conn. Gen. Stat. Ann. §§ 3-56a to -75a (Supp. 1964). After fifteen years of state custody during which claims may be made, the state treasurer is empowered to institute proceedings to declare the property escheated to the state.

II. CONSTITUTIONAL PROBLEMS

Two primary constitutional problems exist in the area of state escheat of unclaimed property: (1) due process considerations raised by the elimination, because of the disproportionately large expense involved, of individual notice of state action to the many persons entitled to small amounts of property presumed abandoned (discussed in the comments to sections 301 and 302); and (2) the requirement that holders of unclaimed property report and deliver the property to the state even though the statute of limitations has run in the holder's favor as against the owner (discussed in the comments to section 601). A third, and the most serious, constitutional problem was only recently resolved by the *Texas v. New Jersey* decision. As more states enacted escheat laws, there was the increasing possibility that holders of unclaimed property would be liable to deliver the property to more than one state. This problem and its resolution are discussed immediately below.

The chief uncertainty involved in the escheat statutes of many states was constitutional in nature. In *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71 (1961), the Supreme Court of

the United States had declared it a violation of due process for more than one state to escheat a given item of intangible personal property. It appeared that any state facing an actual or potential dispute by a sister state would be forced to bring an original action in the Supreme Court for a declaration of its rights before it could take the property.

This situation arose because a growing number of states were enacting abandoned property statutes and because the Court in previous cases had approved two conflicting tests for a state's power to escheat property through state court proceedings. In *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541 (1948), New York was given power to take custody of unclaimed insurance policies issued on the lives of its residents by foreign corporations. In *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), the state of the property holder's domicile was permitted to escheat intangibles held for owners whose last known addresses were outside New Jersey. In the *Connecticut Mutual* case, the majority expressly did not decide what other states might also have sufficient contacts, although a number of additional possibilities occurred to commentators. With this conflict of authority it was not surprising, therefore, to find that the jurisdictional tests incorporated in the unclaimed property laws of the several states should vary, each being most favorable to the enacting state. Since both jurisdictional tests approved by the Court required some "contacts," either with the owner or the holder, jurisdictional tests varied not only by state but also by types of property covered by the particular state's law. In an attempt to resolve the conflicts that would naturally arise, the Uniform Act suggested a reciprocity clause, Uniform Disposition of Unclaimed Property Act § 10, 9A Uniform Laws Ann. 428 (1965), which allowed another state to escheat certain types of property if the owner's last known address were there. But the success of this clause was contingent upon its enactment by every state, and this was considered unlikely, especially in those states most adversely affected, e.g., New Jersey and New York which, under the *Standard Oil* case, could escheat property on the basis of the holder's domicile being in the state.

Amid this confusion, however, the then pending original jurisdiction case of *Texas v. New Jersey*, first of the cases brought in

the Supreme Court under the *Western Union* doctrine, held some promise of laying down a single rule, or scheme of rules, to guide states seeking to escheat intangible personalty. That promise was realized. On February 1, 1965, a majority of eight, speaking through Mr. Justice Black, set forth a "federal common law" rule that only the state of the last known address of the person entitled to the debt, as shown on the records of the holder, could escheat. Where there was no address recorded, the state of the holder's domicile could take the property for itself until another state came forward with proof that the last known address of the property owner was in that state. The state of the holder's domicile similarly could escheat if the owner's last known address on the holder's records were in another state which did not then provide for escheat of such property, except that the other state could take the property as soon as its laws did so provide. 379 U.S. 674, 682 (1965). The Court accepted the basic proposals of its special master appointed to hear the arguments of Texas, New Jersey, Florida, and Pennsylvania, all claiming some \$26,000 in debts held by the Sun Oil Company, which asked only to be protected from multiple liability. Florida, an intervenor in the action, was upheld in its contention that the last known recorded address of the owner should be the guide.

The Court rejected proposed primary rules which would have allowed escheat only by the state with the "most significant contacts" with the property; or by the state of the holder's domicile (the test advocated by Mr. Justice Stewart, dissenting); or by the state where the holder had its principal place of business. The Court's solution, it maintained, was dictated not by constitutional compulsion but by equity and ease of administration. Moreover, it was in line with cases holding that the state of a decedent's domicile at death could levy an inheritance tax on the decedent's intangible personalty, wherever located, whereas another state, in which was located the physical evidence of the intangibles, could not levy such a tax. *Baldwin v. Missouri*, 281 U.S. 586 (1930); *Farmers Loan & Trust Co. v. Minnesota*, 280 U.S. 204 (1930); *Blodgett v. Silberman*, 277 U.S. 1 (1928).

The primary rule, granting unclaimed property to the state of the owner's last known address, is simple and is easily administered. It will apply in most cases. Because it "will tend to

distribute escheats among the States in the proportion of the commercial activities of their residents," 379 U.S. 674, 681, it is, in the draftsmen's opinion, highly beneficial and favorable to the majority of states, certainly far preferable to a rule giving huge sums in unclaimed property to the relatively few states where large national corporations, owing debts to persons throughout the country, are domiciled.

Texas v. New Jersey does, however, leave some problems in the area of unclaimed property. But it has cleared away much crippling confusion. To many states, two of the decision's most important effects are likely to be, (1) assurance that the state courts can be utilized for escheat proceedings in the great number of cases where these courts can obtain personal jurisdiction over the holder, and (2) the elimination of any need for state court jurisdiction over the holder as a prerequisite to a valid claim for escheat, since the mere location of the owner's last known address in the state, no matter what "contacts" the state has with the holder, is sufficient under the federal common law developed by the Supreme Court in the exercise of its original jurisdiction. Many problems of enforcing a state's rights remain. These will be canvassed in this memorandum, chiefly in the analysis of section 602, *infra*.

Two questions of marginal application of the decision may be disposed of fairly readily. One involves the apparently simple test of the "last known address" on the holder's records. Can two states dispute which of two or more recorded addresses is the "last known"? Such cases, the draftsmen believe, by their nature will be extremely rare. Generally the last address chronologically reported to the holder will be considered the "last known." (It should be emphasized that, as long as there is some address on the holder's records, actual knowledge by anyone of another, unrecorded address, appears to be immaterial.) The second question concerns those occasions when the state of the holder's domicile may take property because another state, wherein the owner is recorded to have last resided, does not "provide for escheat" of property otherwise due it. Suppose a state presumes a certain item of property abandoned under its laws because the owner has made no claim to it for the statutory fifteen years. The last known address of the owner, on the records of

the corporation, is in a state which provides for taking such property after twenty years. It would seem that the first state could not take the property, since the other state currently 'provides' for its taking, although at some future time.

Texas v. New Jersey is bound to have a profound effect on the abandoned property laws of the states. It will act as a powerful incentive to the passage of comprehensive laws by states not now having them. It must lead to adjustments in existing laws. Some New York City bankers, apparently rather unhappy about the majority opinion, have predicted that the New York Legislature will soon change that state's pioneering 22-year-old statute to conform to the federal law. N.Y. Times, Feb. 7, 1965, §3, p. 11, col. 4.

III. THE PROPOSED ACT

The accompanying statutory draft attempts to take full advantage of the opportunities opened to many states by *Texas v. New Jersey*. It asserts each state's right to every type of intangible personal property due to the state under the law as now declared, despite lack of personal jurisdiction over the holder by that state's courts, and regardless of the character of certain holders, e.g., federal courts or public bodies or officers of other states. Tangible personal property is claimed only if actually located in the escheating state.

The various "contacts" requirements contained in individual sections of the Uniform Act as prerequisites to a right of escheat have been eliminated. Section 201 of this draft sets forth the three general Supreme Court standards as prerequisites, referring the reader to the sections dealing with nine classes of property for the time periods and circumstances of owner inactivity giving rise to the presumption of abandonment, if the three basic conditions are met.

The administrative, or procedural, sections of the Uniform Act have been retained largely intact. A new enforcement provision is contained in section 602. Of particular interest is subsection (d). It is aimed at reducing the inconvenience of administration, by giving other states a financial incentive to sue in the name of the escheating state to recover property due to the

C

escheating state, where the courts of the escheating state cannot obtain jurisdiction over the holder. The section reciprocally provides that at the request of such other state the attorney general will sue in a court in the first state in the name of such other state. It is hoped that this procedure will prove usable in most cases where the state treasurer, choosing to bring suit, otherwise would have to go outside the state. Where the sum involved is large enough, the treasurer might bring the suit himself to save the state the 15 per cent reward recommended to be given to agent-states.

C

Another important provision is section 404, "Claims by other states." This section sets up an administrative procedure whereby, once a state has taken property under the Supreme Court's two exceptions to the general rule, another state claiming to have become entitled to that property under these two exceptions is given the opportunity to present its claim to the state treasurer. It is hoped that settlements under this section will avoid many original actions in the Supreme Court of the United States.

Generally, the Act operates as follows:

(1) After fifteen years during which no interest has been shown in personal property, it is presumed abandoned.

(2) The holder of such property annually submits to the state treasurer a verified report of all such property held by him. Unless the owner's claim against the holder is barred by the statute of limitations, the holder, before filing the report, mails a notice to the owner at his last known address. Names and addresses of all owners except owners of sums less than ten dollars are reported to the state treasurer. Sums below that amount are reported in the aggregate.

(3) Within 120 days from the receipt of the annual report, the state treasurer gives notice by publication and by mail to each owner named in the report. The owner has 65 days after the second published notice to claim his property from the holder.

(4) If no claim is allowed by the holder within that 65 day period, the holder is given 20 days to deliver the property, with increments accrued during the period of holding, to the custody of the state treasurer. Having done so, he is relieved of all liability to the owner.

(5) Within the 15 year custodial period, the state treasurer may sell received property other than money. Listed shares of stock, if sold, are sold at prevailing exchange prices; other property may be sold at public sale.

(6) Net funds, from which the state treasurer may first deduct the costs connected with the sale and keeping of the property, are deposited in the state treasury. The treasurer retains at least \$50,000 in a trust fund from which claims are paid. A public record is kept of the names and addresses of all owners whose names and addresses have been reported to the state.

(7) Claims made for the property during the 15 year custodial period are considered by the state treasurer within 90 days after filing. A formal hearing may be held at the claimant's request. A decision is rendered in writing on each claim.

(8) Claims allowed are paid in full, without deduction for service charges or costs of sale and notice. The owner is credited with interest and other increments accruing to property other than money before any sale by the state treasurer.

(9) Claimants aggrieved by decisions of the state treasurer or by his failure to act may petition the superior court to establish their claim. Trial is de novo without a jury.

(10) At the end of fifteen years of custody, if no claim has been established, the treasurer commences a superior court action for escheat. Again, published and mailed notice of the hearing is given to all owners whose names and last known addresses are on state records. If no claimant appears and succeeds, and if the treasurer establishes that he has complied with the law, the property escheats.

The treasurer is empowered to check the records of anyone he believes is holding unclaimed property presumed abandoned under the terms of this act. Penalties are provided for willful failure to report or deliver such property to the state.

IV. ALTERNATIVE SOLUTIONS TO THE PROBLEM

New York, New Jersey, Pennsylvania, and Massachusetts, among other states, have their own individual abandoned prop-

erty laws, which do not purport to be based on the Uniform Act. However, most single-state acts were originally introduced before the promulgation of the Uniform Act in 1955. Since then, most states introducing a comprehensive abandoned property law have enacted legislation purporting to be the Uniform Act, or containing the basic structure and some of the basic wording of the Act. Exceptions are Kentucky, Ky. Rev. Stat. ch. 393 (1963); Alaska, Alaska Stat. §§ 09.50.070 to .50.160 (1962), and possibly Texas, Tex. Rev. Civ. Stat. Ann. arts. 3272a, 3273 (Supp. 1964). Delaware's individual act took effect in 1955. Del. Code Ann. tit. 12, §§ 1130-1194 (Supp. 1964).

The property classifications and the procedures set up in the Uniform Act were considered to be well thought out, easily administrable, and fair to holders, owners, and the state. Compare Mass. Gen. Laws Ann. ch. 200A (1958), introduced in 1950, which puts holders to the trouble and expense (although later reimbursed) of giving all notice and making all sales, with court proceedings frequently required. Moreover, the Uniform Act is itself based on the original ideas of such pioneering statutes as the New York Abandoned Property Law, introduced in 1943.

Existing procedures in other states are far from uniform. In New Hampshire, for example, state custody and escheat of inactive bank accounts is a fairly complex process of court hearings and private publications of notice. N.H. Rev. Stat. Ann. §§ 386:24 to :30 (1955). On the other hand, a totally voluntary and unenforceable procedure covers almost any other situation. N.H. Rev. Stat. Ann. §543:10 (1955).

The eventual escheat provided in the proposed statute sets it apart from the Uniform Act, which is a purely "custodial" statute. Unclaimed property statutes are generally classified as custodial, escheat, and combined custodial-escheat (the type used here). Some states provide immediate escheat for some classes of personal property and a period of custody for others. Each type of statute has its advantages and disadvantages.

In the combined custodial-escheat statute, the state is enabled to close its books on a great amount of received property and to consider the property its own, free from a contingent liability of uncertain scope. Still, the owner is protected because this advan-

tage is achieved only after thirty years during which the person entitled to the property has made no claim to it.

Disadvantages of a custodial-escheat statute, as compared with a pure custodial statute, are as follows:

(1) The administrative expense involved in a combined statute is greater than that connected with a purely custodial statute, because of additional court costs, mailings, and publications, and the transfer of property from the treasurer's custodial rolls to escheat rolls.

(2) The degree of uniformity sought in the custodial Uniform Act, the basic structure of which has been otherwise used in this statute, is reduced by provisions for escheat.

(3) From the viewpoint of owners of unclaimed property, a statute which keeps the books open for claims indefinitely is preferable to a law under which the owner eventually loses all right to his property.

In the opinion of the draftsmen, a combined custodial-escheat statute with fairly long periods before custody and escheat represents a safe venture. Much of the administrative expense involved can be charged against property collected under the statute. Owners have 30 years to assert a claim for their property, either to the holder or the state. Other states seeking to take property from the situs state are given, it is felt, sufficient time to act. Finally, nationwide uniformity is not likely in any event, because the states with their own individual abandoned property laws show no signs of a willingness to switch to the Uniform Act.

THE STATUTE

PART I. SHORT TITLE AND DEFINITIONS

SECTION 101. *Short title.* [CCP § 1500]

This Act may be called the "Unclaimed Property Law."

SECTION 102. *Definitions.* [CCP § 1501]

(a) "Banking organization" means any national bank, state bank, savings bank or institution for savings, trust company, banking company, depository, and all similar organizations.

[CCP 1501(a)]

(b) "Business association" means any private corporation, joint stock company, business trust, partnership, or any association of two or more individuals for business purposes.

[CCP 1501(b)]

(c) "Escheat" (except in section 403) means the presumption of abandonment of property, followed by:

[New]

(1) immediate proceedings for the taking of title, or

(2) the required delivery to the State followed by immediate proceedings for the taking of title, or

(3) perpetual State custody of the property, or

(4) a period of State custody followed by proceedings for the taking of title.

(d) "Financial organization" means any building and loan association, federal savings and loan association, credit union, small loan company, investment company, and all similar organizations.

[CCP 1501(c)]

(e) "Holder" means any person in possession of property subject to this Act belonging to another, or who is a trustee in the case of a trust, or is indebted to another on an obligation subject to this Act.

[CCP 1501(d)]

(f) "Life insurance corporation" means any association or corporation transacting the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities.

[CCP § 1501(e)]

(g) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this Act, or his legal representative.

[CCP § 1501(f)]

(h) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

[CCP § 1501(g)]

(i) "Property" means tangible personalty located in this State, and all intangible personalty.

[New]

(j) "Utility" means any person who owns or operates for pub-

[CCP 1501(h)]

lic use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Comment

The definitions of this section are designed to conform with and to take advantage of the rules set forth in *Texas v. New Jersey*.

The definition of "banking organization" enlarges the Uniform Act's category of "banking organization" to include national banks. Montana, Mont. Rev. Codes Ann. § 67-2201 (Supp. 1965), and Utah, Utah Code Ann. § 78-44-1 (Supp. 1965), also make this change. There is a question raised in this area pertaining to the state's authority to escheat funds held by a national bank. The source of this question is *First National Bank v. California*, 262 U.S. 366 (1923), in which a California statute providing for immediate escheat was held ineffective as against such funds. Although not overruled by *Anderson Nat'l Bank v. Lueckett*, 321 U.S. 233 (1944), the latter case, in permitting Kentucky to take custody of funds held by a national bank, distinguished the former case on the basis that Kentucky's laws provided for a custodial period followed by a determination that there was "abandonment in fact" before escheat could occur whereas the California statute provided for immediate escheat on the basis of presumed abandonment. The proposed statute should fall within the protection of the *Anderson* decision. There is a fifteen year custodial period followed by the formal escheat proceedings of section 403 before escheat can occur. Although there remains a possibility that *First National Bank v. California*, *supra*, could be cited to defeat the proposed statute as it applies to national banks, "it would appear that the *Anderson Nat'l. Bank* case, in effect, removed practically all restriction on the state's power over abandoned bank deposits." Sentell, *A Study of Escheat and Unclaimed Property Statutes* 114 (1962).

Because *Texas v. New Jersey* eliminated any need for the escheating state to have jurisdiction over the holder, the language in the definitions previously making such jurisdiction a prerequisite to action under this act has been deleted from the definitions of "banking organization," "financial organization," "life insurance

corporation," "utility," and all sections of the act which had a "contacts" requirement. Rather than adopt the "contacts" rule, which the Supreme Court felt would leave in permanent turmoil a question which should be settled once and for all, the Court decided to delineate a clear rule which would "govern all types of intangible obligations like these." *Texas v. New Jersey, supra*, at 678. Accordingly, now even in the absence of traditional "contacts" between the state and the holder, the state can escheat property owed to a person whose last known address, as shown on the books of the holder, is in this state. The Court candidly admitted that the rule adopted was not dictated by constitutional considerations and that any of the several rules urged by the various interested states could have been adopted consistent with constitutional requirements. (Query: does original action jurisdiction make any resulting decision of the Supreme Court "constitutional"?) "It is fundamentally a question of ease of administration and of equity." *Texas v. New Jersey, supra*, at 683.

A definition of "escheat" has been added to make clear that in most cases this term refers to all types of laws pertaining to abandoned property. In part this is necessitated by references to the abandoned property laws of other states which may provide for immediate escheat (in the narrow, specific sense), a purely custodial plan, a custodial-escheat arrangement, or some variation thereof. Thus, unless the context otherwise requires, "escheat" is used in a broad sense in both the statute and the memorandum.

The definition of "property" has been limited to tangible personalty located in this state and all intangible personalty wherever located. This change was necessary because of the statement of the Supreme Court in *Texas v. New Jersey, supra*, that "[w]ith respect to tangible property, real or personal, it has always been the unquestioned rule in all jurisdictions that only the State in which the property is located may escheat." At 677.

The definition of property does not, however, include realty. Several reasons prompted this decision. Property in decedents' estates is not made subject to this act, thus, the most likely case in which realty might be involved is excepted. Furthermore, there is a question whether realty can ever be deemed "abandoned" in the sense of, and with the consequences inherent in, the proposed statute. "The general rule is that the legal doctrine of divestiture of title to property by abandonment is not applicable as to real property where the state has passed a perfect legal title thereto." 1 Am. Jur. 2d *Abandoned Property* §13 (1962); *Sowles v. Minot*, 82 Vt. 344, 73 Atl. 1025 (1909). "A legal title perfected into a grant or vested by deed or by judgment may never be lost by abandonment." *Goldman v. Quadrato*, 142 Conn. 398, 114 A.2d 687 (1955).

PART II. PRESUMPTION OF ABANDONMENT

SECTION 201. *General conditions precedent to the presumption of abandonment.* [New]

Unless otherwise provided, intangible personal property is subject to a presumption of abandonment under this Act if the appropriate conditions leading to a presumption of abandonment as described in sections 202 to 210 of this Act are satisfied, and if:

(a) the last known address of the owner appearing on the records of the holder is in this State, whether or not the holder:

(1) is domiciled in this State or is engaged in or transacts business in this State, or

(2) if a court, public corporation, public authority, or public officer, is a court, public corporation, public authority, or public officer of this State or a political subdivision thereof; or

(b) no address of the owner appears on the records of the holder, and the holder is:

(1) domiciled in this State, or

(2) a court of this State, or

(3) a federal court within this State, or

(4) a public corporation, public authority, or public officer of this State or a political subdivision thereof; or

(c) the last known address of the owner appearing on the records of the holder is in another state, and such other state makes no provision in its laws for the escheat of such property, and the holder is:

(1) domiciled in this State, or

(2) a court of this State, or

(3) a federal court within this State, or

(4) a public corporation, public authority, or public officer of this State or a political subdivision thereof.

Comment

This section sets forth three rules—one of which must be satisfied before a state can even consider escheating intangible personal property under any of the following sections. Tangible personalty may still be escheated if it is located in this state and meets one of the appropriate tests set out in sections 202 through 210 of this act. This section is simply *Texas v. New Jersey* incorporated into the proposed statute. The statute thus provides for the widest possible assertion of the state's power to escheat property under the Supreme Court decision.

Subsection (a), the primary rule set down by the Court, provides for escheat of abandoned property by a state on the sole basis that the owner's last known address, as shown on the holder's

records, is in that state. Subsections (b) and (c) allow escheat by the domiciliary state of the holder, subject to later escheat by another state (see section 404), under the conditions specified in those subsections.

The primary rule gives some states many opportunities for escheating property never before contemplated. Apparently all traditional "contacts" tests with the holder have been abandoned—thus states may claim property held by any corporation in the United States, just so long as the owner's last address as shown by the corporation's books is in the escheating state. (However, jurisdiction over the holder may still be a separate problem for enforcement purposes—see section 602.) Moreover, by subsection (a) (2) it is made clear that this same test—last known address of the owner—applies to courts, public corporations and officers, so that again the location of such court or public body is irrelevant.

For the purposes of subsections (b) and (c), providing for escheat by the state in which the holder is domiciled, "domiciled in this state" is meant to include courts, public corporations and public officers of this state—however strange it may seem to speak of these entities as being "domiciled" in a state.

SECTION 202. *Property held by banking or financial organizations.*

The following property held or owing by a banking or financial organization is presumed abandoned:

(a) Any demand, savings, or matured time deposit made with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) corresponded in writing with the banking organization concerning the deposit; or

(3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid toward the purchase of shares or other interest in a financial organization, or any deposit made therewith, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within fifteen years:

(1) increased or decreased the amount of the funds or deposit or presented an appropriate record for the crediting of interest or dividends; or

(2) corresponded in writing with the financial organization concerning the funds or deposit; or

(3) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on certified checks or on written instruments on which a banking or financial organization is directly liable, including by way of illustration but not of limitation certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than fifteen years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has, within fifteen years, corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization.

[CCP § 1502]

[CCP § 1502 (a)]

[CCP 1502 (a)(1)]

[CCP 1502 (a)(2)]

[CCP 1502 (a)(3)]

[CCP 1502 (b)]

[CCP 1502 (b)(1)]

[CCP 1502 (b)(2)]

[CCP 1502 (b)(3)]

[CCP 1502 (c)
[CCP 1502 (d)]

(d) Any funds or other property removed from a safe-deposit box or any other safekeeping repository on which the lease or rental period has expired due to nonpayment of rental charges or other reason, excluding any charges that may lawfully be withheld, that have been unclaimed by the owner for more than fifteen years from the date on which the lease or rental period expired.

[CCP 1502 (e)]

Comment

This section adopts section 2 of the Uniform Act almost without change. The subject matter covered, unclaimed property held by banking or financial organizations, is one commonly covered by statute, whether part of any uniform law or not. At least thirty-six states provide for capture of dormant bank accounts, and many provide for the capture of tangible and intangible personal property taken from safe deposit boxes.

One change, carried uniformly through all sections of the proposed act, first appears in this section. The period necessary for the subject property to be presumed abandoned is suggested to be fifteen years rather than seven as used in the Uniform Act. Several reasons prompted the change. Comments to the Uniform Act suggest that states may well wish to change this provision and that it does not decrease the effectiveness of the Uniform Act to do so. Commissioners' Note, 9A Uniform Laws Ann. 420 (1965). Almost every adopting state lengthens this period; and at least half of these states use the suggested fifteen year period. The proposed act only presumes property abandoned after fifteen years of inactivity; another fifteen year period must run before the property escheats. Fifteen years is used in every section except section 206 for the sake of achieving uniformity in treating different types of property and making the act simpler and more understandable to holders of property.

The tests for deciding whether property is abandoned are similar throughout the act and are mainly three: a lack of activity in relation to the account or other property, written correspondence concerning the property, or other interest as indicated by written memoranda.

SECTION 203. *Unclaimed funds held by life insurance corporations.* [CCP 1502]

All moneys held and owing by any life insurance corporation to an insured or annuitant, or other person entitled thereto, shall be presumed abandoned if unclaimed and unpaid for more than fifteen years after the moneys became due and payable, as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. If it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has, within the preceding fifteen years, (a) assigned, re-adjusted, or paid premiums on the policy, or subjected the policy to loan, or (b) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Comment

This section is the counterpart of section 3 of the Uniform Act. The only point meriting special mention is the jurisdictional test. The Uniform Act provides for this type of property, as the proposed act does for all types of property in section 201, that escheat may occur if "the last known address of the owner, appearing on the records of the holder, is in this state." This seems ideal, as it spreads over all the states the proceeds to be realized from this area. But states like New York, where many insurance companies are incorporated, have adopted other jurisdictional tests—thus giving rise to the problem of multiple state escheat claims. This problem was resolved by *Texas v. New Jersey*, *supra*, in favor of the test adopted in the proposed act. New York will undoubtedly have to amend its law. See Section II of this memorandum.

SECTION 204. *Deposits and refunds held by utilities.* [New]

The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility to be entitled thereto for more than fifteen years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility to be entitled thereto for more than fifteen years after the date it became payable in accordance with the final determination or order providing for the refund.

Comment

The only change in this section from the Uniform Act is to eliminate the "contacts" requirement as formerly contained in the "in this state" language of section 4 of the Uniform Act. See also Section II, *supra*. Total reliance is thus placed on the three rules of section 201.

SECTION 205. *Undistributed dividends and distributions of business associations.* [CCP § 1504]

Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within fifteen years after the date prescribed for payment or delivery, is presumed abandoned.

Comment

As in section 204, the change in this section is an elimination of the jurisdictional tests proposed by the Uniform Act. The problem of possible escheat by several states is settled by *Texas v. New Jersey, supra*, at the expense of states in which many corporations are incorporated, by adopting a rule which, in effect, emphasizes population. *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), is thus overruled.

SECTION 206. *Property of business associations and banking or financial organizations held in respect of dissolution.* [CCP 1505]

All property distributable in the course of a voluntary or involuntary dissolution or liquidation of a business association, banking organization, or financial organization that is unclaimed by the owner at the date of final dissolution or liquidation is presumed abandoned.

Comment

This section adopts the category of property covered by section 6 of the Uniform Act. It changes the point in time at which the property is presumed abandoned. Presently, under some law, e.g., N.H. Rev. Stat. Ann. §§ 294:97 to :98 (1955), a corporation may exist for three years after the court decree is issued which dissolves such corporation, for the purpose of winding up its business and distributing its property. The end of this three year period or the time when the actual and final dissolution or liquidation occurs, whichever is first, appears to be a convenient and reasonable time at which to presume the property abandoned. With this test no problems of custody, storage, or maintenance of the property will arise solely because of this act, as might have been the case under the Uniform Act's test.

In accord with the *Texas v. New Jersey* decision the "contacts" tests of the Uniform Act have been eliminated.

SECTION 207. *Property held by fiduciaries.* [CCP §1506]

All property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within fifteen years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

Comment

Various alternative "contacts" requirements contained in the Uniform Act are eliminated from this section, thus adopting the tests of section 201.

SECTION 208. *Property held by courts and public officers and agencies.* [CCP 1507]

All property held for the owner by any court, including a federal court, or any public corporation, public authority, or public officer of any state or a political subdivision thereof, that has remained unclaimed by the owner for more than fifteen years is presumed abandoned.

Comment

This section is essentially section 8 of the Uniform Act, but in addition, the proposed act covers tangible personalty and also subjects property held by federal courts within the state to the provisions of the act. There is precedent for such a change. Utah Code Ann. §78-44-8 (Supp. 1965), and Va. Code Ann. §55-210.9 (Supp. 1964) specifically include federal courts within the states. The Supreme Court has held that states have this right. *U.S. v. Klein*, 303 U.S. 276 (1938). See annotations, 95 L. Ed. 1093 (1950), 7 L. Ed.2d 871 (1961).

Another change in this section eliminates the "contacts" test. In so doing, the scope of this section becomes very broad—including every court, public corporation, authority or officer of any state, and political subdivisions thereof. Although this seems to be the scope permissible under the Supreme Court rule, the practical difficulties of enforcement and the legal intricacies involved may persuasively argue for limiting this section, either in the statutory language itself or as the act is administered, to courts, public officials or agencies and political subdivisions which are part of, or located in, this state.

If so limited, enforcement becomes less of a question. A state's own courts should be no problem; however federal courts located even within the state are a different matter. Can a state go to another federal court of equal authority or must it go to a superior court—possibly the Supreme Court? The problem is compounded when, as in the proposed statute, a state tries to reach property held by every court and public authority in every state. In trying to reach such property, a state may find itself bringing numerous original actions in the Supreme Court. However, although the Supreme Court has original jurisdiction in suits involving states as a party, such jurisdiction is not necessarily exclusive. Thus resort may be had to lesser federal courts and even state courts. But in any case where a state is dissatisfied with the results of its efforts in such courts, review may be secured in the form of an original action in the Supreme Court. Should this burden on the courts become too great, another rule regulating this category of holders could be expected. These questions are actually posed by the *Texas v. New Jersey* decision rather than answered.

The seriousness of this problem could be greatly reduced if a majority of the states adopted a provision like that proposed in section 602(d). Such a reciprocal provision would make the attorney general of each state the agent of the other states. See section 602 and the related discussion.

SECTION 209. *Unclaimed property held by the federal government.* CCP §§ 1600-1615

[From the effective date of any law enacted by the federal government providing for the discovery of unclaimed property held by the federal government and for the furnishing or availability of such information to the states,] [A]ll property, including choses in action in sums certain and all debts owed, entrusted funds, or other property held by the federal government or any agency, officer, or appointee thereof, is presumed abandoned only if the last known address of the owner is in this State and the property has been unclaimed for fifteen years. The federal government or a government officer or appointee thereof may deduct from the amount paid or delivered to the State Treasurer the proportionate share of the actual and necessary costs of examining such records and reporting such information. This State shall hold the federal government harmless to the extent of the value of any property so paid or delivered from any claim which then exists, or which thereafter may arise, or be made in respect to property delivered to the State Treasurer by the federal government.

Comment

This section has no counterpart in the Uniform Act. However, several states have provisions pertaining to this class of property. Kentucky flatly subjects such property like any other class to the provisions of the act. Ky. Rev. Stat. Ann. §393.068 (1963). California has a statute, in addition to the Uniform Act, in many ways like the Uniform Act but pertaining only to federally held property. Cal. Civ. Proc. Code §§1600-1615 (West Supp. 1964). No cases have been litigated under these laws; if there

are problems or objections in this area, they are yet to be tested.

Interest by the states in this class of abandoned property is understandable, considering the potential source of revenue involved. One observer reports that it has been estimated that the value of the unclaimed property held by the federal government amounts to about five billion dollars. Sentell, *A Study of Escheat and Unclaimed Property Statutes* 71 (1962).

The problem concerning this class of property is that of discovery. Presently the states have no means of determining what property is held by which part of the federal government; nor is the federal government required to disclose such information. If and when federal laws are passed providing for such disclosure, this class of abandoned property may well be one of the most important in terms of revenue realized.

The proposed subsection presents alternative approaches to this problem. If the bracketed part is deleted, then the proposed subsection is like Kentucky's. Federally held property is just another category of property presently subject to the act. Should the states learn of property being held by the federal government, or should informal disclosure procedures be established by agencies of the federal government, the states could proceed immediately to take custody of the property presumed abandoned. If the bracketed part is included, any activity by the state concerning this class of property is necessarily delayed until formal enactment of laws by Congress providing "for the discovery of unclaimed property held by the federal government, and for the furnishing of such information to the states."

It should be noted that the word "only" is used in stating the jurisdictional test to make it clear that the state will escheat property held by the federal government *only* when the last known address of the owner is in this state. Since the federal government is not really domiciled in any state, it will be left to other statutes or decisions to dispose of property within the scope of the exceptions (section 201(b) and 201(c)) to the court's primary rule which is made the sole jurisdictional test for this section.

SECTION 210. *Other property held for another person.* [CCP 1508]

All property not otherwise covered by this Act, including any income or increment thereon and deducting any lawful charges, that is held or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than fifteen years after it became due, payable, or distributable is presumed abandoned.

Comment

This omnibus section of the proposed act is essentially the omnibus section 9 of the Uniform Act, except that once again the requirement of contacts in the escheating state has been eliminated pursuant to *Texas v. New Jersey, supra*.

PART III. IDENTIFICATION AND DISPOSITION OF
ABANDONED PROPERTY

SECTION 301. *Report of abandoned property.* [CCP § 1510, 1517(c)(part), 1522(c)(part)]

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this Act shall report to the State Treasurer with respect to the property as hereinafter provided.

[CCP 1510 (a)]

(b) The report shall be verified and shall include:

[CCP 1510 (a)]

(1) the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of [ten] dollars or more presumed abandoned under this Act;

[CCP 1510 (b)(1)]

(2) in case of unclaimed funds of life insurance corporations, the full name of the insured, annuitant, or beneficiary and his last known address appearing on the life insurance corporation's records;

[CCP 1510 (b)(2)]

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under [ten] dollars each may be reported in the aggregate;

[CCP 1510 (b)(3)]

(4) except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

[CCP 1510 (b)(4)]

(5) such other information as the State Treasurer prescribes by rule as necessary for the administration of this Act.

[CCP 1510 (b)(5)]

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

[CCP 1510 (c)]

(d) The report shall be filed before [November 1] of each year as of [June 30] next preceding. The State Treasurer may postpone the reporting date upon the written request of any person required to file a report.

[CCP 1510 (d)]

(e) If the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner by first class mail at his last known address, if any such address is known or may be ascertained by due diligence, setting forth the steps necessary to rebut the presumption of abandonment.

[CCP § 1510 (e)]

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

[CCP § 1510 (f)]

(g) The initial report filed under this chapter shall include all property as to which the time period resulting in a presumption of abandonment under the terms of this Act commenced running on or after [Jan. 1, 19—].

[CCP 1510 (g)]

(h) The State Treasurer shall keep a permanent record of [CEP 1517(c)(part)] all reports submitted to him.

(i) The State Treasurer or any person or agency designated by him may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this Act.

[CEP 1522 (first paragraph)]

Comment

This is section 11 of the Uniform Act with only minor modification. Section 23 of the Uniform Act is incorporated into this section, since it seems closely related to the other parts of the section. In broadening the permissible scope of applicability of this act, *Texas v. New Jersey* also complicated much of the administrative procedure needed to be set up in the act. The best example may possibly be found in this section, requiring the reporting to the appropriate state treasurer of property deemed abandoned under its laws. For just as one can require such reporting, so can every other state in the union—and every statute may establish different procedures, times, and forms. Thus the reporting obligation of a corporation operating in many states may impose a heavy burden on interstate commerce. Although probably a justifiable hindrance, everything possible should be done to minimize this burden. A uniform reporting procedure would be a great improvement. Should such a statute be proposed, every state should of course amend its reporting requirements accordingly. However, since the reporting requirements proposed in this act are drawn from the Uniform Disposition of Unclaimed Property Act, it is entirely conceivable that any proposed uniform reporting procedure would closely follow that already in this proposed act. Several parts of this section merit special comment.

Subsections (b) (1) and (b) (3) are the source of a problem discussed more fully under section 302, *infra*. This problem is one of two major constitutional objections raised against the Uniform Act—that dispensing with notice to the last known owners of property of any value violates the due process clause of the Fourteenth Amendment. Under an act of our type, where custody leads to final escheat, the problem is compounded. This problem of notices arises because of practical necessity, as is indicated by subsections (b) (1) and (b) (3). To require notice by the state to owners of all property notwithstanding its value, holders would have to report to the state all known names and addresses of owners. For some holders, such as banks, who hold many small amounts, this would be a great burden. Moreover, the proceeds realized by the state would not justify the expense involved—there being a distinct possibility that a particular claim would result in a net loss to the state. The same constitutional problem arises no matter what minimum dollar value is chosen as the point at which the reporting of known names and addresses is no longer required. Accordingly, although the Uniform Act uses three dollars, many states use a higher dollar value, twenty-five being common but fifty being the maximum. Ten dollars is used in the proposed act as a compromise, but the figure is certainly open to

change. In (3), holders are authorized to report such items in the aggregate rather than individually. This is merely an extension of (1), since individual names and addresses are not reported.

An alternative solution to this problem is available but not recommended, since a constitutional test of this aspect of the act is not likely, and the outcome under the proposed act is far from certain. However, to avoid the constitutional problem which results from not reporting names and addresses of owners of property of less than ten dollars in value, a state could simply elect not to take custody of, or eventually escheat, such amounts. This would violate the objective of preventing windfalls to holders, and could prove to be a material windfall to those holders who, if complete reporting of names were required, would be unduly burdened. Avoiding either undesirable effect, *i.e.*, a windfall or undue burden, seems to justify the constitutional risk involved in the recommended statute.

Subsection (d) provides for the time when reports must be filed. Such dates may be changed to meet specific situations in various states unknown to the draftsmen. For example, if other reports are required of particular types of businesses, it may be desirable to have the time for filing all reports, related in any way, coincide for the convenience of the businessman making the report. However, it should be remembered that nationwide uniformity in the reporting requirements would be of the greatest benefit to businesses required to report to two or more states.

Subsection (e) requires that the holder communicate with the owner if reasonably possible. This subsection requires greater effort on the part of the holder than does the corresponding part of the Uniform Act. Such contact is deemed desirable to avoid, if possible, the constitutional objections to taking property without due process of law through lack of notice. This section makes no exception for minimum dollar amounts. Thus a holder must try to notify by mail any owner whose name and address are known or can be discovered with due diligence.

Subsection (g) regulates how much property must initially be reported. By omitting this section, a fair interpretation of the statute would be that all property must be reported upon which the period of time resulting in the presumption of abandonment had run by the effective date of the act. Rather than accept this solution, which presents practical difficulties for conscientious holders, the draftsmen recommend that the bracketed date be made to read January 1 of the twentieth year preceding the year in which the act becomes effective. Thus, any property which by the terms of the proposed act has been presumed abandoned for more than five years would not be reported.

States which have adopted provisions similar to the proposed subsection (g) have chosen various periods of time beyond which reporting of abandoned property is no longer required. In states where the period for the presumption of abandonment to arise is fifteen years, twenty-five years is a common period of limitation. In such states, any property which, by the terms of the proposed act, has been abandoned for more than ten years would not be reported. The actual period chosen is subject to each state's individual preference.

SECTION 302. *Notice and publication of lists of abandoned property.* [CCP 1511]

(a) Within [120] days from the filing of the report required by section 301, the State Treasurer shall cause notice to be published at least once each week for two successive weeks in a newspaper having general circulation in the county in this State in which is located the last known address of any person to be named in the notice. If no address is listed, or if the address is outside this State, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this State.

[CCP 1511(a)]

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

[CCP 1511(b)]

(1) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county;

[CCP 1511(b)(1)]

(2) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Treasurer;

[CCP 1511(b)(2)]

(3) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within [65] days from the date of the second published notice, the abandoned property will be placed not later than [85] days after such publication date in the custody of the State Treasurer, to whom all further claims must thereafter be directed;

[CCP 1511(b)(3)]

(4) a statement that if no claim is filed with the State Treasurer within fifteen years after the close of the calendar year in which any property presumed abandoned under this Act is paid or delivered to the State Treasurer, the property shall escheat to the State and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

[New]

(c) A copy of the second published notice, in which shall be included the date on which the notice is to be published, shall be mailed to the holder on or before the date of publication.

[New]

(d) Within [120] days from the receipt of the report required by section 301, the State Treasurer shall mail a notice to each person having an address listed therein.

CCP 1511(d)]

(e) The mailed notice shall contain:

[CCP 1511(e)]

(1) a statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled;

(2) the name and address of the person holding the property and any necessary information regarding changes of the name and address of the holder;

(3) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the

published notice, the property will be placed in the custody of the State Treasurer, to whom all further claims must be directed.

(4) a statement that if no claim is filed with the State Treasurer within fifteen years after the close of the calendar year in which any property presumed abandoned under this Act is paid or delivered to the State Treasurer, the property shall escheat to the State and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

Comment

This is section 12 of the Uniform Act, but with some material changes. While the Uniform Act was admittedly designed to minimize administration expense, the proposed section 302 is more concerned with avoiding the constitutional objection to the act introduced in the comment to section 301.

The most important change relating to the constitutional problem is the omission of a section of the Uniform Act dispensing with notice to owners of property of less than twenty-five dollars. It is claimed that escheating the property violates the due process clause of the Fourteenth Amendment because there is no notice given the owner at any time of the proceedings. In *New Jersey v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950), a similar provision of the New Jersey act dispensing with notice to the owner prior to the escheat of amounts under fifty dollars was declared unconstitutional. Moreover, this provision of the Uniform Act has been held unconstitutional by a New Mexico trial court. *Clovis National Bank v. Callaway*, 69 N.M. 119, 364 P.2d 748 (1961). Unfortunately, the decision on this point was not appealed. However, these cases indicate that a constitutional objection does exist when the requirement of notice is dispensed with. The recommended section 302 provides for complete direct notice and publication within the context of aggregate reporting as provided by section 301. By simply omitting the Uniform Act's provision, the proposed statute requires mailed notice and publication by the state for all names and addresses of owners known to the state. This will include all owners of property of value greater than ten dollars and, if reported by the holders, those owners of property of value less than ten dollars. Notice to all owners is the only sure way completely to avoid the constitutional objection, but practical considerations make this undesirable, unless the alternative is adopted which exempts items of property of less than ten dollars in value from the provisions of the act. It is believed that the safeguards provided here and in section 301 (direct communication by the holder) may well be adequate to satisfy constitutional requirements.

Subsection (c) is an addition to provide the holder with notice so that he may more easily meet his obligations under this section and section 303.

SECTION 303. *Payment or delivery of abandoned property.* [CCP 1512]

(a) Every person who has filed a report as required by section 301 shall within twenty days after the time specified in section 302 for claiming the property from the holder pay or deliver to the State Treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 302, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

[CCP 1512]

(b) The State Treasurer may decline to receive any property reported which he deems to have a value less than the cost of giving notice or holding sale, or he may postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within [120] days after filing the report required under section 301, the State Treasurer shall be deemed to have elected to receive the custody of the property.

[New]

Comment

The proposed section 303 brings together in one section the provisions found in the Uniform Act in sections 13, 22, and 24. These provisions all relate to the payment or delivery of abandoned property to the state treasurer and it is deemed desirable that the provisions be combined.

SECTION 304. *Sale of abandoned property.*

(a) All abandoned property delivered to the State Treasurer under this Act, other than money or securities listed on any established stock exchange, may be sold by him to the highest bidder at public sale in whatever place in this State or elsewhere that affords in his judgment the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient.

[CCP 1516]

(b) Securities listed on an established stock exchange may be sold by the State Treasurer. Any sale shall be at the prevailing price on that exchange.

(c) Any sale of abandoned property, other than money or securities listed on any established stock exchange, held under this section shall be preceded by a single publication of notice thereof at least three weeks in advance of sale in a newspaper having general circulation in the county where the property is to be sold.

(d) The purchaser at any sale conducted by the State Treasurer pursuant to this Act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

(e) No action shall be brought or maintained by any person against the State or any officer thereof for or on account of any transaction entered into pursuant to and in accordance with the provisions of this section.

Comment

This is a modification of section 17 of the Uniform Act. The Uniform Act section requires a treasurer's sale within one year after the delivery of the property. The proposed section would allow him greater leeway for discretion based on prevailing market trends and prices. He does not have to sell, but if he does sell, sale under subsection (a) must be in the place offering, in his judgment, the best market. The draftsmen saw no reason to confine places of sale to cities in the situs state. Although in practice most sales probably will be made within the state, there may arise situations where no in-state city offers any market for a particular item. As worded, the proposed section makes unnecessary the Uniform Act's wording: "He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property." That becomes simply one more factor to be taken into consideration in deciding whether to sell at all.

The section adds a separate provision for securities listed on an established stock exchange. The new classification is contained in the California version of the Uniform Act. Cal. Code Civ. Proc. §1516 (West Supp. 1964). The language in subsection (b) relating to sale of such stock is a modification of the California language, which says: "Securities listed on an established stock exchange shall be sold at the prevailing prices on said exchange." The language in subsection (b) makes clear that, as with the property covered under subsection (a), the treasurer does not have to sell the stock. If in his judgment sale would be advantageous, it shall be at prevailing exchange prices. There should be no difficulty in meeting this requirement. The treasurer can without difficulty open an account with a broker, to whom ordinary orders may be given. Any broker's commission will be deducted from the receipts of the sale price received by the state, but the sale itself would have been at prevailing exchange prices.

Subsection (e) contains the wording of Cal. Code Civ. Proc. §1516(d) (West Supp. 1964). This was prudently added to the Uniform Act to hold the state harmless in any action brought by an owner aggrieved by the state sale of what he might consider a cherished item of personal property.

SECTION 305. *Deposit of funds.* [CCP 1517]

(a) All funds received under this Act, including the proceeds from the sale of property under section 304, shall be deposited by the State Treasurer in the [State Treasury], except that the State Treasurer shall retain at all times in a separate trust fund the sum of [fifty thousand dollars], from which he shall promptly pay all claims allowed as hereinafter provided.

(b) Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and the name and last known address of each insured person, beneficiary, or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(c) Before making any deposit in the [State Treasury], the State Treasurer may deduct:

- (1) any costs in connection with the sale of abandoned property;
- (2) any costs of mailing and publication in connection with the abandoned property; and
- (3) reasonable service charges.

Comment

This section is based on section 18 of the Uniform Act. The draft provides that all funds, except for a \$50,000 fund from which claim payments may be expeditiously made without the need for an appropriation, shall go to the state treasury. Another fund might be chosen to receive these moneys. Some states choose the school fund; Virginia designates the Literary Fund, and North Carolina, the state university. This is a matter for legislative determination.

Subsection (c) lets the treasurer reimburse himself for expenses connected with specific property, the balance being paid over to the state treasury. This allows records to be kept as to part of the cost of administering this act, and puts operations to a large extent on a self-sustaining basis.

PART IV. CONFLICTING CLAIMS

SECTION 401. *Claims for abandoned property.* [CCP §§ 151.8, 151.9]

(a) Any person, not including another state, claiming an interest in property paid or delivered to the State Treasurer may file a claim thereto or to the proceeds of the sale thereof within fifteen years from the last day of the calendar year in which such property is paid or delivered to the State Treasurer under this Act.

(b) The State Treasurer shall consider each claim within 90 days after it is filed. He shall hold a hearing, if the claimant requests, and receive evidence concerning the claim.

(c) The State Treasurer shall make a written finding on each claim presented or heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be of public record.

(d) The State Treasurer shall pay each claim allowed without deduction for costs of notice or sale or for any service charges.

Comment

This section sets forth the procedure for filing claims to property already in the custody of the state for all persons except other states. In order to incorporate the special standards applicable to claims made by another state into the statutory claim procedure, without unduly complicating the procedure for all other claimants, it was decided a separate section was necessary. Accordingly, section 404 was drafted to set forth the procedure for claims brought by other states, and states were excepted from the operation of section 401.

Subsection (a), based on section 19 of the Uniform Act, provides a claim period equal to and concurrent with the time period after which the property is escheated. A 15 year period during which the state has custody of the property is equal to the period some states now provide for pre-escheat treasury custody of court-held funds. It is considered of sufficient duration to protect the interests of owners, considering that the total

period, counting from the time the period leading to presumption of abandonment begins to run until the time of escheat, is 30 years in most cases.

The subsection is drafted to provide a claims period running from an easily determinable date — the last day of the calendar year in which the property passes to state custody — rather than the date the presumption of abandonment arose, or a report was made to the state treasurer. As drafted, therefore, the section will often yield a claims period longer than precisely 15 years. This is a further protection for owners.

Subsections (b) and (c) are modeled after section 20 of the Uniform Act. A number of states having comprehensive abandoned property statutes report that few formal hearings are held on claims. New York holds such hearings in only three per cent of refund cases. Sentell, *A Study of Escheat and Unclaimed Property Statutes* 72 (1962). Nevertheless, the machinery should be available to provide all possible safeguards for owners, particularly because our proposed statute is of the combined custodial-escheat type. If a claimant requests a formal hearing, he will have one. Otherwise, the state treasurer will take the claim under advisement and will decide it in accordance with administrative procedures which he shall have devised. In either case, the state treasurer is required to render a decision in writing. This provides an additional element of fairness to claimants.

Subsection (d) provides that the successful claimant receive his property or the sale value of it without charge for the costs connected with its keeping or sale. In this respect the statute is "purely" custodial, with the state acting essentially as a gratuitous bailee. This is yet another aid to and protection for owners.

In practice, the state probably will suffer no net loss by reason of this apparent generosity. State abandoned property statutes draw into the treasury much more than the state is ever required to pay out in claims allowed to owners. Even under purely custodial statutes, the state has the use, for all intents and purposes in perpetuity, of large sums it will never have to repay. Arizona, for example, in the first five years of operation of the Uniform Act, took in \$589,000 while paying out only \$89,000. Oregon's four-year figures are \$542,000 in receipts, only \$103,000 in refunds. Utah's figures for four years: \$608,000 received; \$42,000 paid out. Sentell, *A Study of Escheat and Unclaimed Property Statutes* 81-84 (1962).

SECTION 402. *Judicial action upon determination.* CCP § 1520]

Any person aggrieved by a finding of the State Treasurer under section 401 or upon whose claim the State Treasurer has failed to act within 90 days after the filing of the claim may file a petition to establish his claim in the [insert appropriate state court]. The proceeding shall be brought within 90 days after the decision of the State Treasurer or within 180 days from the filing of the claim if the State Treasurer fails to act. A copy of the petition and a notice of hearing shall be served upon the State Treasurer, who shall have not less than 30 days within which to respond by answer. The proceeding shall be tried de novo without a jury. If judgment is rendered in favor of the petitioner, the State Treasurer shall make payment as provided in subsection (d) of section 401.

Comment

This is fundamentally section 21 of the Uniform Act. For the convenience of the state treasurer, it is suggested that for purposes of the actions authorized in sections 401 and 402 each state fill in the brackets with the particular name of the appropriate state court located in the county wherein is located the capital of the state.

The provision for trial de novo yields additional protection for a claimant. He or the treasurer may make use of any previous written decision of the treasurer as evidence, but the court is not to make any presumption in favor of the correctness of such decision.

This section is also limited to claimants other than states, since the procedure for states is contained in section 404. The limitation is achieved by adding "under section 401" as a limitation to "person." Section 401 now specifically excludes states.

SECTION 403. *Escheat proceedings.* [New]

(a) Within 90 days after the close of the fifteenth calendar year after the year in which any property presumed abandoned under this Act is paid or delivered to the State Treasurer, if no claim therefor has been made and established by any person, not including another state, entitled thereto, the State Treasurer shall commence a civil action in the [insert appropriate state court] for a determination that such property shall escheat to the State; but if during, and at the expiration of, the 90 days, a final judgment is pending in a court action previously brought by a claimant under section 402, or if a person who has filed a claim to the property within the period prescribed by subsection (a) of section 401 remains entitled at the expiration of such 90 days to bring a court action under section 402, the State Treasurer shall commence his civil action after a final court judgment has been rendered adversely to the petitioning claimant, or after the expiration of the period in which a claimant would be entitled to bring a court action under section 402. The hearing in the action brought by the State Treasurer shall commence not less than 40 days after the commencement of the action.

(b) At the time such action is commenced, the State Treasurer shall cause notice thereof to be published once each week for two successive weeks in a newspaper having general circulation in the county in which is situated the last known address of the owner according to the records of the State Treasurer. If no address is listed, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within the State. Such notice shall be entitled "Notice of Proceedings to Declare Certain Abandoned Property Escheated to the State of []" and shall include the following matters:

- (1) the name and last known address of the owner;
- (2) a brief description of the property;
- (3) the name of the prior holder or holders;
- (4) the amount or value of the property;
- (5) a statement that the property was unclaimed for at least fifteen years while in the possession of the prior holder or holders and was unclaimed for fifteen years after it was paid or delivered to the State Treasurer pursuant to this Act;
- (6) a statement that a complaint has been filed in the action for escheat;
- (7) the place, time, and date of the hearing;

(8) a direction that unless any person claiming to be entitled to the property, or his representative, makes claim for the property in the manner provided in section 401 before the hearing, or appears at the hearing to substantiate his claim, the property shall escheat to the State and all right, title, or interest therein of the owners will be terminated and all claims of the owners thereto forever barred.

(c) Also at the time such action is commenced, the State Treasurer shall mail to the last known address of the owner according to the records of the State Treasurer a notice alike in all respects to the published notice required under the preceding subsection.

(d) If no person shall file a claim, or appear at the hearing to substantiate a claim, or where the court shall determine that a claimant is not entitled to the property claimed by him, then the court, if satisfied by evidence that the State Treasurer has complied with this Act, shall enter a judgment that the subject property has escheated to the State and that all right, title, or interest therein of the owners is terminated and all claims of the owners thereto forever barred.

Comment

This section also specifically excludes states from its operation through the language "not including another state" in subsection (a) and "of the owners" in subsections (b)(8) and (d). The specific exclusion may not actually be necessary, since any final escheat proceedings can be effective only as against other persons and not other states. "[T]he State of corporate domicile should be allowed to cut off the claims of private persons only, retaining the property for itself only until some other state comes forward with proof that it has a superior right to escheat." *Texas v. New Jersey, supra*, at 682. Thus, under this language of the Supreme Court any attempt by a state to prevent or cut off subsequent claims by another state under the *Texas v. New Jersey* exceptions would be wholly ineffective.

This section borrows its basic structure from the similar escheat provision of Connecticut. Conn. Gen. Stat. Ann. §3-72a (Supp. 1964). It provides a specific escheat procedure, as opposed to the present generally-worded law which simply declares

certain kinds of unclaimed property, at the expiration of the custodial period, escheated to the state. In effect this section gives an owner further notice of the jeopardy of his property and one more chance to obtain it, this time solely through court proceedings instead of administrative hearing. However, the escheat judgment, once rendered, cannot be reopened. To provide for such reopening upon, for example, a statement that the claimant had never received actual notice, would vitiate the escheat provision of this statute.

A civil action for escheat in an action in rem. It is believed that the provisions for notice in this section are sufficient to meet any constitutional due process requirements, where names of owners are known to the state. Here again, however, where small sums reported in the aggregate are involved, there can be no notice, and the section, as do sections 301 and 302, risks unconstitutionality for considerations of ease and expense of administration.

Whereas Connecticut provides only for notice by publication within the state, this proposed section once again requires a state mailing of notice to the last known address of the owner, whether within or without state boundaries.

It should be noted that subsection (a) delays the treasurer in beginning his escheat action in two situations. Section 402 may operate so that a claimant filing at or near the end of the claims period will have 180 days thereafter to file his own action if the treasurer does not render a decision on his claim, or 90 days if the treasurer does act adversely. Also, a court action brought by the claimant either before or after the expiration of the claims period might not have come to final judgment within 90 days after the close of the fifteenth year after the state received the property. It would be unfair to let the state treasurer interfere with these rights by precipitating an escheat action, particularly because the claimant may not be the owner named in the state records and so might receive no notice of the escheat proceedings.

As drafted, the section produces a custodial period that often will be longer than the minimum 15 years. From delivery to commencement of the escheat action, the period could be as long as 16 years, 89 days. The ease of administration provided by an end-of-calendar-year date from which the custodial period begins makes the longer period worthwhile. Moreover, the section allows the state treasurer to bring virtually all his escheat actions which date back to a given year at the same time.

SECTION 404. *Claims by other states.* [New]

(a) At any time after property has been paid or delivered to the State Treasurer under this Act, and notwithstanding any decree by any court of this State under section 403 that such property is escheated to this State, any other state shall be entitled to present to the State Treasurer a claim that such other state has a superior right to escheat such property because:

(1) although no address of the owner of the property appeared on the records of a holder domiciled in this State, including a court of this State, a federal court within this State, or a public corporation, public authority, or public officer of this State or a political subdivision thereof, when the property was presumed abandoned under this Act, the other state possesses proof that the last known address of the owner was in fact in such other state; or,

(2) the last known address of the owner of the property appearing on the records of a holder domiciled in this State, including a court of this State, or federal court within this State, or a public Corporation, public authority, or public officer of this State or a political subdivision thereof, was in such other state when the property was presumed abandoned under this Act, and such other state at that time did not provide in its laws for the escheat of such property, but currently so provides.

(b) The State Treasurer shall hold a hearing on each such claim within 90 days after it is filed. He shall make a written finding on each claim heard, stating the substance of any evidence heard by him and the reasons for his finding. The finding shall be of public record. He shall allow a claim if reasonably satisfied by proof of the superior right of the other state.

Comment

This important section provides the administrative procedure by which another state, claiming a right in property which has already been escheated by this state under one of the Supreme Court's exceptions to the general rule (section 201 (b) and (c)) may present its claim without bringing an original action in the Supreme Court. Thus states may avoid forcing original actions in the Supreme Court.

The state treasurer is directed to allow the claim if he is reasonably satisfied that the claiming state has shown a superior right to the property under one of the two specific exceptions set out by the Supreme Court. Sections 201 (b) and 201 (c) are meant to embody the two exceptions, set out in *Texas v. New Jersey*, *supra*, as precisely as possible. Of course, if the state making the claim is dissatisfied with the state treasurer's disposition of the claim it can always bring an original action in the Supreme Court.

An issue which may prove troublesome to resolve in such cases is whether or not a claiming state has proved that "the last known address of the owner was in fact in such other state." The test under the primary rule, the last known address of the owner appearing on the records of the holder, is quite objective and easy to apply. But what constitutes proof that the "last known address of the owner was in fact in such other state"? What sources of information will be accepted? And when has one proved that an address is really the last known address? And known to whom? Must the owner have died at such address for one to be sure that it was the last known address?

Although the revised statute separates the claim procedure for states from that applicable to all other claimants, there are some similarities between sections 401 and 404. The time within which the state treasurer must act is the same, and he must make a written finding on all claims, which finding shall be of public record. There are also differences besides those already noted. A state may bring an action at any time after the state has taken custody of the property while all other claimants must act within fifteen years. Under section 404, the state treasurer must hold a hearing on each claim, while under section 401 such action is discretionary unless requested by the claimant.

PART V. OBLIGATIONS OF HOLDER AFTER PAYMENT
OR DELIVERY

SECTION 501. *Relief from liability.* [CCP § 1513]

(a) Upon payment or delivery to the State Treasurer of property abandoned, the State shall assume custody and shall be responsible for all claims thereto.

(b) Any person who pays or delivers abandoned property to the State Treasurer under this Act, and has in all other respects complied with the provisions of this Act, is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property.

(c) Any holder who has paid or delivered to the State Treasurer moneys presumed abandoned may make payment therefor within the time limited by section 401 to any person appearing to be the owner, and shall be reimbursed by the State Treasurer upon proof of such payment and proof that the payee was entitled thereto. Any holder who has delivered to the State Treasurer property, including a certificate of any interest in a business association, pursuant to this Act, may reclaim such property if still in the possession of the State Treasurer, without payment of any fee or other charges upon proof that the owner thereof has claimed such property from the holder.

Comment

Section 501 constitutes, with some change, section 14 of the Uniform Act. The holder is relieved of "all liability," insofar as claims by alleged owners are concerned. Subsection (c) provides that the holder, if satisfied as to the validity of a claim made to him, may make payment to the owner and be reimbursed by the state upon proof of payment and the validity of the claim. If a claim is made upon the holder for a specific item of tangible or intangible property, he may reclaim it from the state if it has not been sold by the state treasurer. Although a holder is under no obligation to make such a payment to the claimant, he may well want to be the one to do so to maintain favorable customer relations.

SECTION 302. *Income accruing after payment or delivery.* [CCP § 1514]

When property other than money is delivered to the State Treasurer under this Act, any dividends, interest, or other increments realized or accruing on such property at or prior to liquidation or conversion thereof into money, shall upon receipt be credited by the State Treasurer to the owner's account. Except for amounts so credited, the owner is not entitled to receive income or other increments or money or other property paid or delivered to the State Treasurer under this Act.

Comment

This is essentially section 15 of the Uniform Act, modified in a manner quite similar to that used by California. Cal. Code Civ. Proc. §1514 (West Supp. 1964). It differs from the Uniform Act in that the Uniform Act does not provide for crediting to the owner's account any increment related thereto.

There would seem to be little justification for denying the owner any earnings or increments realized or accrued on his property except for the practical difficulties involved. That is, when the property held by the state is money or has been converted into money, identifying specific earnings or increments attributable thereto becomes practically impossible. Why should one owner be credited with a greater rate of interest than another simply because the state purchased a better investment with his money? Should the state be chargeable with a minimum return on the property it holds whether or not the property in fact earned such amounts? Because of these and other questions, it seems defensible to deny the owner credit for any earnings once his property is in the form of cash.

But the above reasons do not justify denying to the owner credit for interest, dividends, or other increments clearly attributable to his property before its conversion or liquidation into cash. While under section 17 of the Uniform Act, property must be sold within one year, a different result is reached by section 304 of the proposed act. In the proposed section 304, the state is empowered to sell the property, but is not required to do so at all. Thus, any specifically identifiable earnings or increments, which may be substantial, continue to be credited to the owner's account indefinitely.

PART VI. COMPLIANCE AND ENFORCEMENT

SECTION 601. *Periods of limitation not a bar.* [CCP §1515]

The expiration of any period of time, specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed to be abandoned property, nor affect any duty to file a report required by this Act or to pay or deliver abandoned property to the State Treasurer; but this section shall not be construed to affect any right of defense which became vested prior to the effective date of this Act.

Comment

Section 16 of the Uniform Act lifts the bar of the statute of limitations in requiring holders to report or pay over property to the custody of the state. That is, unclaimed property is treated as subject to the act even though the period of limitations has run in the holder's favor before the presumed date of abandonment.

In *Campbell v. Holt*, 115 U.S. 620 (1885), the Supreme Court held that where, under the local law as interpreted by the courts, title to real or personal property has not "vested," the Fourteenth Amendment is not violated by legislation reviving a cause of action barred by the statute of limitations. Perusal of local law therefore becomes important in this connection. While the draftsmen are of opinion that, as drafted, the section is constitutional, on balance it may be decided that it would be wise to join Arizona, Washington, and Utah in omitting this section. Omission would have the effect of allowing the statute of limitations as a defense to any state action seeking to enforce a report or delivery of abandoned property.

Taking New Hampshire as an example, N.H. Const., part I, art. 23, a Bill of Rights article, forbids the General Court to pass "retrospective laws . . . for the decision of civil causes. . . ." A law that takes away the ripened defense of the statute of limitations in an action pending at the law's effective date is retrospective, unconstitutional, and void. *Wart v. Winnick*, 3 N.H. 473, 481 (1826), citing at 479 the language of Justice Story sitting as United States circuit justice in New Hampshire in *Society v. Wheeler*, 2 Gallison 105 (1805): "Upon principle every statute, which takes away or impairs vested rights, acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

"A law may be retrospective in its operation, if it affect an existing cause of action, or an existing right of defence, by taking away or abrogating a perfect existing right, although no suit or legal proceeding then exists." *Clark v. Clark*, 10 N.H. 380, 386 (1839); *Rockport v. Walden*, 54 N.H. 167, 173 (1874).

It would certainly appear that, at least as to rights of defense vested before the effective date of this proposed statute, a legislature cannot act to force the holder to put the property in state hands for the custody of an owner who could not himself obtain the property from the holder. The California Supreme Court, per Traynor, J., has reached this conclusion. *Douglas Aircraft Co. v. Cranston*, 58 Cal. 2d 462, 374 P.2d 819 (1962) (interpreting the statute of limitations provision as applying only to claims on which the statute had not run on the effective date of California's act). Oregon had added a proviso similar to the one the draftsmen of this proposed statute have inserted. Ore. Rev. Stat. §98:376 (Replacement 1963). Illinois, in adopting the Uniform Act, was faced with an 1895 state supreme court decision that on the complete running of the statute of limitations, a right of defense against a money demand was a vested property right within the protection of the constitutional guaranty of due process. Nevertheless, the Uniform Act's section 16 was enacted without change. Ill. Ann. Stat. ch. 141, §116 (Smith-Hurd 1964). An accompanying comment admits that "the decision has never been reversed and would furnish a basis for attacking the constitutionality of section 16 insofar as it attempts to remove a bar which has accrued prior to the time the State asserts its right to take custody of the property."

With respect to rights of defense which, but for section 601 of this proposed statute, would vest while the statute is in force, the draftsmen see no unconstitutionally retrospective element in the section's operation. The section might be seen as equivalent to legislation extending the statute of limitations, or otherwise preventing it from ever running in favor of a potential litigant. Such legislation has been allowed universally. The California Supreme Court found no difficulty in supporting the similar California section. "As to [claims on which the statute of limitations had not run on the effective date of the act], and as to claims that will arise in the future, however, it prevents the running of the statute applicable between the holder and the owner from barring the duty of the holder to report and pay to the Controller." *Douglas Aircraft Co. v. Cranston*, 58 Cal. 2d 462, 466, 374 P.2d 819, 822 (1962).

The question of constitutionality is a close one, however. The New Jersey Supreme Court reached an opposite result in *New Jersey v. Standard Oil Co.*, 5 N.J. 281, 74 A.2d 565 (1950). It is not clear whether the limitations period had run to its end

after the effective date of New Jersey's general unclaimed property law, but the decision did not purport to turn on any such distinction. The state was simply denied escheat of unpaid wages, money owing on checks, and money payable on bond coupons. "The principle is embedded in our jurisprudence that where a right of action has become barred under existing law, the statutory defense constitutes a vested right which is proof against legislative impairment." 5 N.J. at 293, 74 A.2d at 571.

If the particular state's law of vesting is seen as in accord with that of New Jersey, it may be desirable to shorten the period of presumption of abandonment to less than the limitations period. That is the solution adopted by the New Jersey legislature. N.J. Stat. Ann. §2A:37-29 (1952). The draftsmen with their view that lifting the bar of later-vesting rights of defense is not retrospective, do not consider this necessary.

It might have been chosen, as a matter of policy, to draft the statute so as to permit the statute of limitations to serve as a defense to state action claiming abandoned property. Massachusetts does not require a holder in whose favor the limitations period has run to report property presumed abandoned, "unless the court orders him to do so." Mass. Gen. Laws Ann. ch. 200A, §7(c) (1958).

Although some courts have held that the running of the period of limitations vests a right of defense against the owner, it has not been stated that the statute removes all liability to pay the debt, or that it vests actual title to the unclaimed property. The draftsmen therefore see no substantial obstacle and have decided to lift the bar for the purpose of preventing windfalls to holders.

In connection with many types, perhaps the bulk, of abandoned property, the statute of limitations does not run during the period of inactivity which gives rise to the presumption of abandonment. See *Hutchins v. Gilman*, 9 N.H. 359 (1838) (no cause of action triggering the running of the statute accrues to one who has received money for another until a demand is made). The Uniform Commissioners cite funds held by fiduciaries, insurance policies, utility deposits, and bank deposits as in the category of property falling outside the scope of the statute of limitations problem. Commissioners' Note, 9A Uniform Laws Ann. 437-38 (1965).

This problem seems to be complicated even more by the *Texas v. New Jersey* decision. Now a conflict of laws problem arises as to which statute of limitations might be applicable—that of the escheating state or that of the state where the holder is domiciled. And if the latter, can the law of this state affect the running of a statute of limitations in another state? Because of these problems, and because as previously noted, there will probably be few cases where the statute has run, it may be desirable to omit this section, thus making the running of a statute of limitations a bar to any action under this act. The problem of which statute of limitations would be applicable would remain however.

SECTION 602. *Enforcement.* [New]

(a) The State Treasurer may bring an action in a court of appropriate jurisdiction, as specified in this section, to enforce the duty of any person under this Act to permit the examination of the records of such person; or for a judicial determination that particular property known by the State Treasurer to be held by any person is subject under law to escheat by this State pursuant to this Act; or to enforce the delivery of any property to the State Treasurer as required under this Act.

(b) The State Treasurer may bring an action under this Act in any court of this State of appropriate jurisdiction if:

(1) the holder is any person domiciled in this State, including any business association, banking organization, or financial organization organized under the laws of, or created in, this State, and any national bank, or federal savings and loan association located in this State, but not including any federal court within this State;

(2) the holder is any person engaged in or transacting business in this State, although not domiciled in this State;

(3) the property is tangible personalty and is held in this State;

(4) the holder is any court of this State, or any public corporation, public authority, or public officer of this State, or a political subdivision thereof.

(c) In any case where no court of this State can obtain jurisdiction over the holder, the State Treasurer may bring an action in any federal or state court with jurisdiction over the holder.

(d) At the request of any other state, the Attorney General of this State shall be empowered to bring an action in the name of such other state in any court of this State or federal court within this State, to enforce the abandoned property laws of such other state against a holder in this State of property lawfully subject to escheat by such other state, if:

(1) the courts of such other state cannot obtain jurisdiction over the holder; and

(2) such other state makes reciprocal provision in its laws for the bringing of an action by an officer of such other state in the name of this State at the request of the Attorney General of this State, to enforce the provisions of this Act against any person in such other state believed by the State Treasurer of this State to hold property subject to a presumption of abandonment under this Act, where the courts of this State cannot obtain jurisdiction over such holder; and

(3) the laws of such other state provide for payment to this State of reasonable costs incurred by the Attorney General

of this State in bringing an action under this section at the request of such other state.

(c) This State shall pay all reasonable costs incurred by any other state in any action brought by such other state at the request of the Attorney General of this State under this section. Any state bringing such action shall be entitled additionally to a reward of [15] per cent of the value, after deducting reasonable costs, of any property recovered for the State as a direct or indirect result of such action, such reward to be paid by the State Treasurer.

Comment

This new section is quite important to the act and unless an appreciable number of states pass this or a similar provision, the Supreme Court's "simple rule" may not be so simple to effectively administer—thus defeating by default the whole purpose of abandoned property laws.

Subsection (a) brings together provisions previously found in various sections of the Uniform Act. This subsection merely states what rights the state treasurer may seek to enforce or determine through court action.

Subsection (b) specifies the situations in which the state treasurer may use his own courts—which should be in most cases. But the "contacts" with the holder necessary to have the right to escheat the property under *Texas v. New Jersey* (which are apparently none—see section 102), and the "contacts" necessary to have jurisdiction over the holder in one's own state courts would seem to be two different standards. It would seem that the traditional "contracts" tests retain their validity when thinking in terms of suing a non-resident holder in one's own state courts. Thus subsection (b) enumerates the conditions under which states have been held to have such traditionally sufficient "contacts" as to sustain a suit. It is conceivable, of course, that an entirely new "contacts" test would be approved for suing non-resident holders in one's own state courts. If the mere fact that the owner's last known address was in this state is accepted as sufficient "contact" with the holder so that this state can get jurisdiction in its courts over a holder on that basis alone, then all escheat proceedings could be in the courts of the escheating state, and the remaining subsections of section 602 would be unnecessary. But if such a jurisdictional rule were accepted, it would seem that it would have to be restricted to the sphere of escheat proceedings, for the prospect of the application of such a jurisdictional rule to other areas of the law can be alarming.

Jurisdiction over federal courts is not asserted by this subsection to be in the state courts. It is recognized that resort must be had to some other federal court. See also section 208.

"Court of this state of appropriate jurisdiction" is also meant to be a broad and permissive standard under which the state treasurer may operate. It is meant to include any court of this state which the state treasurer may find appropriate or convenient.

Assuming that the traditional "contacts" tests will be adhered to for jurisdictional purposes (which seems to be the more likely and logical position), and that therefore there will be some cases in which our courts cannot get jurisdiction over the holder, it is then necessary to have a provision like subsection (c) to reach these cases. The rights described in subsection (c) must necessarily follow from the Supreme Court's decision in *Texas v. New Jersey* to make meaningful its ruling that states can escheat property simply because the last known address of the owner is in this state. Otherwise, in those conceivable cases where the state cannot get jurisdiction over the holder, the state would have the meaningless "right" to escheat property which it had no power to reach. Moreover, there seems to be no constitutional objection to one state suing in the courts of another state. 81 C.J.S. *States* §223 (1955). In the absence of statutes prohibiting such suits, a state seems to be treated like any other person coming into the state to sue. It is also relevant here that although the Supreme Court has original jurisdiction in suits involving states as a party, such jurisdiction is not necessarily exclusive—thus the resort to the lesser federal courts and even state courts provided in subsection (c). But in any case where a state is dissatisfied with the results of its efforts in such courts, review may be secured in the form of an original action in the Supreme Court.

This section is not meant to encourage the state treasurer to go to courts outside the state; rather it is contemplated that his courts will be used in any case where it is possible to do so, including those cases where several courts might have concurrent jurisdiction, and that subsection (c) will be resorted to only where his courts cannot get jurisdiction. Since resort to subsection (c) may be too burdensome on the state treasurer, or the costs involved too great, this section must be read in conjunction with subsection (d).

Subsection (d) really provides an alternative method for accomplishing the same result as provided in subsection (c). In many cases however, it is felt that the subsection (d) procedure will be preferable for reasons of overall ease of enforcement of the abandoned property laws of all the states and because claims which would otherwise be unprofitable to collect may be profitably enforced under this section—thus preventing windfalls to the holders.

Action by this state for another state is conditioned upon that state's willingness to act for this state in corresponding circumstances. But to encourage the passage of such reciprocal provisions by other states, especially important states like New Jersey and Delaware, certain concessions and implied promises are contained in the proposed statute.

Subsection (d) (1) limits the operation of this section to those cases where the state cannot get jurisdiction over the holder (in effect an alternative to direct action under subsection (c)), thus excluding those cases where both states might get jurisdiction, but for some reason the state treasurer would prefer to have the other state's attorney general act for him. This limitation is important to states like Delaware and New Jersey, for it indicates a willingness to be similarly limited in their reciprocal provisions. Although there will still probably be more instances when, for example, New Hampshire asks Delaware to act than when Delaware asks New Hampshire to act for it, this limitation eliminates one large category (concurrent jurisdiction over the holder) from the possible operation of this subsection. It should also be pointed out that the language of the entire section is permissive—the attorney general of one state may or may not act for another state as he chooses, thus giving him the discretion to act selectively or arbitrarily.

The enacting state also asks only for reasonable costs when acting for another state, while promising other states not only their reasonable costs in acting for the escheating state, but also 15 per cent of the value, after deducting reasonable costs, of the property recovered by such other state for the escheating state. (The 15% is only a recommended figure and can be adjusted accordingly.) It is hoped that this incentive will prompt such states as New Jersey and Delaware to pass reciprocal provisions, since in this manner they get at least something from the funds which otherwise they could not touch. At the same time, other escheating states probably save the significant expenses of trying to enforce their claims in such foreign states. Moreover, in the event of a particularly large amount of property, a state could act directly through its state treasurer under subsection (c) and avoid paying the percentage reward recommended in subsection (d) when another state prosecutes its claim.

SECTION 603. *Penalties.* [CCP § 1524]

(a) Any person who wilfully fails to render any report or perform other duties required under this Act shall be punished by a fine of [twenty-five dollars] for each day such report is withheld or such duties not performed, but not more than [one thousand dollars].

(b) Any person who wilfully refuses to pay or deliver abandoned property to the State Treasurer as required under this Act shall be punished by a fine of not less than [one hundred dollars] nor more than [one thousand dollars], or imprisonment for not more than [six months], or both, in the discretion of the court.

Comment

The penalties section is section 25 of the Uniform Act.

In the light of the act's purpose of preventing windfalls to holders and providing non-tax revenue to the states, and considering the state's desire to protect the owner by taking custody of property owed him, it may be seen that willful failure to abide by the provisions of this law is a fraud on the state that can well be held criminally punishable. States with such acts make various provisions for fine and imprisonment. Massachusetts allows a court to fine up to \$500. Florida and Oregon provide that willful offenders shall be guilty of a misdemeanor, with no specific mention of fines or terms of imprisonment. Daily fines range from \$5 (New Mexico) to \$100 (Utah), with maximum amounts of \$1,000 (California, Illinois, Montana, New Mexico) to \$5,000 (Idaho, Utah). The draftsmen suggest that a \$25 a day fine, with a maximum of \$1,000, is adequate under subsection (a), and that a fine of \$100 or \$1,000 or imprisonment for not more than six months, or both, is appropriate under subsection (b).

This section will operate in conjunction with section 301 (i), and section 602 (a) which empower the state treasurer to compel the reporting and delivery of unclaimed property presumed abandoned. After bringing such actions, the treasurer and the attorney general may concur in the belief that a criminal sanction is warranted, and proceedings may be instituted to that end. It should be noted that the requirement in section 301 that the report of abandoned property be verified, and a similar requirement for statements filed under section 303 (a), provide an additional possible penalty in the form of an indictment for false swearing.

PART VII. MISCELLANEOUS

SECTION 701. *Rules and regulations.* [CCP§1525]

The State Treasurer may make such rules and regulations as he finds necessary to administer and enforce the provisions of this Act.

SECTION 702. *Excepted property.* [CCP § 1526]

This Act shall not apply to any property that has been presumed abandoned or has escheated under the laws of another state prior to the effective date of this Act.

Comment

Additional exceptions can be added to this section. To achieve the desired uniformity made possible by adoption of this proposed act, such exceptions should be few in number. They would be appropriate, however, where a state has laws governing classes of unclaimed property unique to that state, or where strong policy reasons argue for not changing existing law.

SECTION 703. *Severability.* [Uncodified]

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

Comment

This is section 28 of the Uniform Act. In view of the questions on the constitutionality of provisions for notice to owners, and the problem relating to lifting the bar of the statute of limitations, it was thought best to have a severability section, hopefully to keep the remainder of the act in force pending amendment of parts held invalid.

SECTION 704. *Repeals and Amendments.*

The following statutes of this state are repealed or amended, as indicated:

Comment

Each state should repeal or amend all of its existing law dealing with the escheat of unclaimed property to conform its law to the provisions of the proposed act. Only in this way can the objective of uniformity be achieved.